UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026(REG)

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.

f/k/a General Motors Corporation, et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

October 26, 2010

9:53 AM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

HEARING re Motion of General Motors LLC to Enforce 363 Sale Order and Approved Deferred Termination Agreements against Rose Chevrolet, Inc., Halleen Chevrolet, Inc., Andy Chevrolet Company, and Leson Chevrolet Company, Inc.

HEARING re Motion of Movant in the Action Entitled Walter J. Lawrence V. General Motors Hourly Rate Employee Pension, and General Motors Corporation, 5:07-CV-408 OC, United States District Court, Middle District of Florida for Entry of an Order Thereby Ordering United States District court Judge for the Middle District of Florida to Appear before This Court to Answer These Criminal Charges

Omnibus Objections to Beneficial Bondholder Claims:

HEARING re Debtors' Forty-Seventh Omnibus Objection to Claims (Duplicate Debt Claims)

HEARING re Debtors' Forty-Ninth Omnibus Objection to Claims (Duplicate Debt Claims)

HEARING re Debtors' Sixty-First Omnibus Objection to Claims (Duplicate Debt Claims)

HEARING re Debtors' Sixty-Third Omnibus Objection to Claims (Duplicate Debt Claims)

HEARING re Debtors' Sixty-Fifth Omnibus Objection to Claims (Duplicate Debt Claims)

HEARING re Debtors' Seventy-First Omnibus Objection to Claims (Duplicate Debt Claims)

HEARING re Debtors' Motion for Preliminary Approval of Settlement, Including Claims Estimation, for Conditional Certification of Settlement Class, to Approve Cash Disbursement and Forms of Notice, and to Set Fairness Hearing, Boyd Bryant vs. Motors Liquidation Company, Adv. Proc. 09-00508-REG

HEARING re Motion of Weber Automotive Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure and Bankruptcy Rule 9024 for Relief from Order Granting Debtors' Twenty-Third Omnibus Objection to Claims

Omnibus Objections to Tax Claims:
HEARING re Debtors' Eighty-Seventh Omnibus Objection to Claims (No Liability Tax Claims)

Omnibus Objections to Claims Assumed by General Motors, LLC:
HEARING re Debtors' Twenty-Third Omnibus Objection to Claims
(Claims Assumed by General Motors, LLC)

Omnibus Objections to Incorrectly Classified Claims:
HEARING re Debtors' Twenty-Seventh Omnibus Objection to Claims
(Incorrectly Classified Claims)

HEARING re Debtors' Twenty-Eighth Omnibus Objection to Claims
(Incorrectly Classified Claims)

HEARING re Debtors' Twenty-Ninth Omnibus Objection to Claims
(Incorrectly Classified Claims)

HEARING re Debtors' Thirtieth Omnibus Objection to Claims
(Incorrectly Classified Claims)

HEARING re Debtors' Thirty-Second Omnibus Objection to Claims
(Incorrectly Classified Claims)

HEARING re Debtors' Ninety-Eighth Omnibus Objection to Claims
(Incorrectly Classified Claims)

HEARING re Debtors' Ninety-Ninth Omnibus Objection to Claims (Incorrectly Classified Claims)

Omnibus Objections to Claims with Insufficient Documentation:

HEARING re Debtors' Thirty-Seventh Omnibus Objection to Claims (Claims with Insufficient Documentation)

HEARING re Debtors' Eighty-Fifth Omnibus Objection to Claims (Claims with Insufficient Documentation)

HEARING re Debtors' Eighty-Sixth Omnibus Objection to Claims (Claims with Insufficient Documentation)

HEARING re Debtors' 104th Omnibus Objection to Claims (Claims with Insufficient Documentation)

HEARING re Debtors' 105th Omnibus Objection to Claims (Claims with Insufficient Documentation)

HEARING re Debtors' 106th Omnibus Objection to Claims (Claims with Insufficient Documentation)

HEARING re Debtors' 107th Omnibus Objection to Claims (Claims with Insufficient Documentation)

HEARING re Debtors' 108th Omnibus Objection to Claims (Claims with Insufficient Documentation)

Omnibus Objections to Employee-Related Claims:
HEARING re Debtors' Eightieth Omnibus Objection to Claims (Supplemental Executive Retirement Benefits Claims of Former Executive Employees)

HEARING re Debtors' Eighty-Second Omnibus Objection to Claims (Claims Relating to Former Employees Represented by United Auto Workers)

HEARING re Debtors' Eighty-Third Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)

HEARING re Debtors' One Hundredth Omnibus Objection to Claims (Claims Relating to Former Employees Represented by United Auto Workers)

HEARING re Debtors' 101st Omnibus Objection to Claims (Claims Relating to Former Employees Represented by United Auto Workers)

HEARING re Debtors' 102nd Omnibus Objection to Claims (Claims Relating to former Employees Represented by United Auto Workers)

HEARING re Debtors' 103rd Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)

Omnibus Objections to Late-Filed Claims:
HEARING re Debtors' Eighty-Ninth Omnibus Objection to Claims and Motion Requesting Enforcement of Bar Date Orders (Late-Filed Claims)

HEARING re Debtors' Ninetieth Omnibus Objection to Claims and Motion Requesting Enforcement of Bar Date Orders (Late-Filed Claims)

HEARING re Debtors' Ninety-First Omnibus Objection to Claims and Motion Requesting Enforcement of Bar Date Orders (Late-Filed Claims)

HEARING re Debtors' Ninety-Second Omnibus Objection to Claims and Motion Requesting Enforcement of Bar Date Orders (Late-Filed Claims)

Omnibus Objections to No Liability GMAC Debt Claims:
HEARING re Debtors' Ninety-Third Omnibus Objection to Claims (No Liability GMAC Debt Claims)

HEARING re Debtors' Ninety-Fourth Omnibus Objection to Claims (No Liability GMAC Debt Claims)

HEARING re Debtors' Ninety-Fifth Omnibus Objection to Claims (No Liability GMAC Debt Claims)

HEARING re Debtors' Ninety-Sixth Omnibus Objection to Claims (No Liability GMAC Debt Claims)

HEARING re Debtors' Ninety-Seventh Omnibus Objection to Claims (No Liability GMAC Debt Claims)

Omnibus Objection to Duplicate and Amended and Superseded Claims:
HEARING re Debtors' Eighty-Eighth Omnibus Objection to Claims (Duplicate and Amended and Superseded Claims)

Interim Fee Applications:

HEARING re Third Application of Weil, Gotshal & Manges LLP, as Attorneys for the Debtors, for Interim Allowance of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from February 1, 2010 through May 31, 2010

HEARING re First Interim Quarterly Application of Caplin & Drysdale, Chartered for Interim Compensation and Reimbursement of Expenses with Respect to Services Rendered as Counsel to the Official Committee of Unsecured Creditors Holdings Asbestos-Related Claims for the Period October 6, 2009 through May 31, 2010

HEARING re Third Interim Application of the Claro Group, LLC, for Allowance of Compensation and Reimbursement of Expenses for the Period February 1, 2010 - May 31, 2010

HEARING re First Interim Application of Dean M. Trafelet, in His Capacity as Legal Representative for Future Asbestos Personal Injury Claimants, for Allowance of Interim Compensation and Reimbursement of Expenses Incurred for the Period from November 13, 2009 through May 31, 2010

HEARING re Third Interim Application of Kramer, Levin, Naftalis & Frankel LLP, as Counsel for the Official Committee of Unsecured Creditors, for Allowance of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses Incurred for the Period February 2, 2010 through May 31, 2010

HEARING re Second Application of Plante & Moran, PLLC, as Accountants for the Debtors, for Interim Allowance of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from February 1, 2010 through May 31, 2010

HEARING re First Interim Application of Stutzman, Bromberg, Esserman & Plifka, a Professional Corporation, for Allowance of Interim Compensation and Reimbursement of Expenses Incurred as Counsel for Dean M. Trafelet in his Capacity as Legal Representative for Future Asbestos Personal Injury Claimants for the Period from February 24, 2010 through May 31, 2010

HEARING re First Application for Interim Professional Compensation\First Interim Application of Bates White, LLC, as Asbestos Liability Consultant to the Official Committee of Unsecured Creditors, for Allowance of Compensation for Professional Services Rendered and for Reimbursement of Actual and Necessary Expenses Incurred for the Period from March 16, 2010 through May 31, 2010

HEARING re First Application for Interim Professional Compensation/First Interim Quarterly Application of Legal Analysis Systems, Inc., for Interim Compensation and Reimbursement of Expenses with Respect to Services Rendered as Consultant on the Valuation of Asbestos Liabilities to the Official Committee of Unsecured Creditors Holdings Asbestos-Related Claims for The Period April 28, 2010 through May 31, 2010

HEARING re Third Interim Fee Application of Jenner & Block LLP for Allowance of Compensation for Services Rendered and Reimbursement of Expenses

HEARING re First Application of Togut, Segal & Segal, LLP as Conflicts Counsel for the Debtors for Allowance of Interim Compensation for Services Rendered for the Period December 21, 2009 through May 31, 2010, and for Reimbursement of Expenses

HEARING re First Interim Application of Analysis Research Planning Corporation as Asbestos Claims Valuation Consultant to Dean M. Trafelet in His Capacity as Legal Representative for Future Asbestos Personal Injury Claimants for Allowance of Interim Compensation and Reimbursement of Expenses Incurred for the Period from March 1, 2010 through May 31, 2010

HEARING re Third Application of Butzel Long, a Professional Corporation, as Special Counsel to the Official Committee of Unsecured Creditors of Motors Liquidation Company, f/k/a General Motors Corporation, for Interim Allowance of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from February 1, 2010 through May 31, 2010

HEARING re Amended First Interim Fee Application of Deloitte Tax LLP as Tax Services Providers for the Period from January 1, 2010 through May 31, 2010

HEARING re Third Interim Application of FTI Consulting, Inc. for Allowance of Compensation and for Reimbursement for Expenses for Services Rendered in the Case for the Period February 1, 2010 through May 31, 2010

HEARING re First Application of Hamilton, Rabinovitz & Associates, Inc. as Consultants for the Debtors with Respect to Present and Future Asbestos Claims, for Interim Allowance of Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses Incurred from February 1, 2010 through May 31, 2010

HEARING re First Consolidated Application of Brady C. Williamson, Fee Examiner, and Godfrey & Kahn, S.C., Counsel to the Fee Examiner, for Interim Allowance of Compensation for Professional Services Rendered from December 28, 2009 through May 31, 2010 and Reimbursement of Actual and Necessary Expenses Incurred from December 28, 2009 through August 31, 2010

HEARING re Second Interim Application of LFR Inc. for Allowance of Compensation and for Reimbursement of Expenses for Services Rendered in the Case for the Period October 1, 2009 through January 31, 2010 and Third Interim Application of LFR Inc. for Allowance of Compensation and for Reimbursement of Expenses for Services Rendered in the Case for the Period February 1, 2010 through May 30, 2010

HEARING re Stipulation and Order for Adjournment of October 26, 2010 Hearing on Third Interim Fee Application of LFR Inc.

HEARING re Debtors' Third Omnibus Motion Pursuant to 11 U.S.C. §365 to Reject Certain Unexpired Leases of Nonresidential Real Property (Tricon Verizon Leasing Only)

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P R O C E E D I N G S

THE COURT: Have seats, please. All right. GM. Motors Liquidation Company. It seems like we have a zillion matters on today's calendar. My agenda runs about twenty-five pages. Let me get a recommendation from you, Mr. Smolinsky as to the means by which I can get the most people out of the courtroom as quickly as possible. My tentative, subject to rights to be heard is to deal with the dealer matters at the end because I'm likely to have to dictate one or more rulings possibly after a recess. And I don't want to make people wait while I'm doing something like that. Go ahead, Mr. Smolinsky.

MR. SMOLINSKY: Good morning, Your Honor. Joseph Smolinsky of Weil Gotshal & Manges for the debtors. As usual, we have a long calendar but we have tried to make it as user friendly as possible. I do think that we can run through most of the calendar fairly quickly. I have no objection and that actually makes sense to move the dealer motion to the end. I think that may be the only matter other than the fee requests that will take a substantial amount of time.

With respect to --

THE COURT: Pause, please, Mr. Smolinsky. Based on your dialogues and other professionals' dialogues, are we going to have as long a session of argument on the fee apps that we had the last two times?

MR. SMOLINSKY: I don't think so, Your Honor. We

have twenty fee applications on today. All matters, as I understand it, are resolved except with respect to four. With respect to those four, there are only two issues that remain at issue in this hearing. The first is the fee rate issue. And the second is the ability of law firms to be compensated for defending their fee application. So I don't expect oral argument on those two issues to be that lengthy unless Your Honor has specific extensive questions.

THE COURT: Go ahead then in accordance with your recommendation.

MR. SMOLINSKY: Okay. Maybe what would make sense because we have a number of people here from the Bryant class action to tackle that matter first so that those people can leave. That matter was initially scheduled for 8:45 this morning. And then --

THE COURT: Did you say 8:45?

MR. SMOLINSKY: It was, Your Honor. And then chambers notified us that they wanted the hearing at 9:45 and we filed an amended agenda in that regard.

(Pause)

MR. SMOLINSKY: Your Honor, this motion which appears as the first uncontested matter seeks final approval of a settlement with the Bryant class action claimants. This matter concerns a nationwide class action based on allegedly defective parking brakes which were found in the 1999 to 2002 GMC and

Chevrolet pickups and SUVs.

The action was originally pending in the state court of Arkansas and was transferred to this court and follows lengthy litigation on class litigation on class action certification. We were before Your Honor on August 6th, 2010 to request preliminary approval of the settlement agreement and to schedule a fairness hearing. As Your Honor may recall, on August 9th, 2010, the Court entered an order approving the settlement preliminarily and setting today as the fairness hearing.

Since that time and in accordance with the preliminary order, Bryant and the provisionally designated class counsel published a notice three times on August 31st, September 1st and September 2nd in the USA Today on one-sixteenth of a page a summary form of notice which was attached to the preliminary order. We have attached copies with the declaration of Jeffrey Dahl (ph.) which is attached to the debtors' brief in support of the settlement as Exhibit B. The full settlement agreement, mailed notice and the reimbursement claim forms were also posted on a website, www.parkingbrakeclasssettlement.com and a 1-800 number was established for parties interested in the settlement agreement to order a copy of the full settlement agreement, the mailed notice and copies of claim forms.

In addition to notice of publication, Garden City

Group, together with MLC, also sent direct mail notices of the settlement to each potential Bryant class action members. You may recall, Your Honor, that we had a list of approximately 6,000 potential claimants that were received from the records of New GM and that is the list that we used to mail notice of the settlement and the claims form.

Both forms of notice advised the absent class members of their ability to opt out of the settlement and their ability to file objections to the hearing today. To date, no objections have been received and we have had a steady flow of claim forms coming in under the procedures that were established. So now today, we request entry of a judgment finally approving the settlement, finally certifying the class counsel as a class and upholding the Court's approval of the notice that were established in the preliminary order.

The underlying settlement contemplates a one billion dollar claim being reduced and allowed in the amount twelve million dollars.

THE COURT: Mr. Smolinsky, did we lose our microphone or did you just drift a little.

MR. SMOLINSKY: I may have stepped away.

THE COURT: Okay. Keep going, please.

MR. SMOLINSKY: Again, Your Honor, the initial claim was filed in the amount of one billion dollars. The settlement was for an allowed claim in the amount of twelve million

dollars. The creditors' committee played an active role in the negotiation of the settlement and fully supports approval.

The Court should also approve the settlement pursuant to Rule 23(e) of the Federal Rules of Civil Procedure because the settlement agreement is procedurally fair, reasonable, adequate and not the product of collusion. Rather, the settlement agreement is the product of extensive arm's length negotiations conducted by experienced counsel with input from the parties. Just for the record, Your Honor, the settlement is substantially fair. In that regard, all the factors set forth in City of Detroit v. Grinnell, 495 F.2d 448, which provides the analytical framework for evaluating substantial fairness of a class action settlement weigh in favor of final approval. Litigation through trial would be complex, expensive and long.

Second, the settlement classes' reaction to the settlement agreement was positive. No settlement class member objected to the settlement agreement or requested exclusion.

Third, the parties have completed enough discovery to recommend settlement. The pertinent question is whether counsel had an adequate appreciation of the merits of the case before negotiating. The parties engaged in aggressive discovery efforts obtaining voluminous amounts of documents and taking over ten depositions. The resulting discovery allowed them to evaluate their strengths and weaknesses of their case.

Next, the risk of establishing liability and damages further weighs in favor of final approval. There's also a risk of maintaining class status throughout the trial. If this settlement was not approved, the debtors would likely be before Your Honor trying to decertify the class. And, of course, there are risks attendant to that litigation.

Finally, Your Honor, the value of litigating is called into question simply given the debtors' bankruptcy. As with a lot of litigation claims here, the risk of bankruptcy and the cents on the dollar aspect creates a positive impetus towards settlement.

So based on the foregoing and for the reasons set forth in the Court's preliminary order, including the Court's specific finding at the time that the settlement agreement is in the best interest of the debtors, their estates, creditors and all parties in interest, including as to all members of the class, we ask that the Court approve the settlement not only under Rule 9019 of the bankruptcy rules but also Rule 23 of the federal rules.

Your Honor, in the preliminary order, we set out -- and in the motion, of course, we set out the fees that are going to be paid to class action counsel. That also is part of the settlement here today. Class counsel is here to answer any questions on the fees. But the way it works is that they get the greater of a claim for four million dollars or thirty-three

percent of the total amount of the claim or four million dollars in cash, whichever is higher, but they're not entitled to get more than thirty-three percent of the claim unless the claims come in such that there's excess value So all claims would have to be satisfied in full before they can get more than the thirty-three percent of the claim amount. That's consistent with the contingency fee agreement that was entered into and approved by the Arkansas court.

I think that's it, Your Honor, unless you have any questions. There was one change to the final judgment. We had estimated an expense reimbursement number for noticing out of, I think, 295,000. That number's been reduced to 279,000 and that's been reflected in a revised judgment that would be submitted to your Court for consideration.

THE COURT: Okay. I have no objections. However, I will permit counsel for either of the two official committees or class counsel to be heard if any wants to be. I see no interest in that.

All right. Because this matter is unopposed, I'm not going to make extensive findings. A settlement of this type, like a few others that I've been called to deal with in my other bag of cases over the last six months, requires me to make findings of two different types. One of them is the classic 9019 inquiry which has as its underlying premise me satisfying myself that the estate isn't giving away the store.

Additionally, as I've had to do in certain environmental settlements and other class action settlements, I'm called upon to make a different kind of inquiry analogous to that which district judges frequently make to satisfy myself that the settlement is fair to the class from the plaintiff's perspective.

In this case, I can and do find that it's within the range of reasonableness and is substantively fair to both sides for the reasons that Mr. Smolinsky articulated. Accordingly, Mr. Smolinsky, you or your designee -- you can enlist class counsel if you wish -- are to provide me with the paperwork to reflect my approval from both points of view.

MR. SMOLINSKY: Thank you, Your Honor. We will. Next, Your Honor, maybe we can go back to the uncontested -- I mean, to the contested matters and handle the Walter Lawrence motion seeking to hold the district court judge from the Middle District of Florida in contempt -- criminal contempt, I believe, for violating the stay.

Your Honor, we filed responsive pleadings not because we were the target of the motion but because justice screamed out for us to do so. I don't know if Mr. Lawrence is here in person or on the phone to present his motion.

THE COURT: Is Mr. Lawrence in the courtroom? Mr. Lawrence, you on the phone?

MR. LAWRENCE (TELEPHONICALLY): This is Mr. Lawrence.

THE COURT: Okay. Mr. Lawrence, I read your brief. Do you want to supplement it in any way?

MR. LAWRENCE: Excuse me, Your Honor?

THE COURT: Do you want to supplement your brief?

MR. LAWRENCE: In regards to the contempt of court?

THE COURT: Yes.

MR. LAWRENCE: Yes. I'd like to supplement it with just one quick thing, if I may, Your Honor. In regards to Judge Hodges' order of September 21st, counsel for the other side has stated -- he's bifurcated his ruling -- Judge Hodges' rulings into two parts.

THE COURT: Would you pause, please?

MR. LAWRENCE: As --

THE COURT: Please, Mr. Lawrence. Just a minute.

(Pause)

MR. LAWRENCE: Excuse me?

THE COURT: Just a minute, please, Mr. Lawrence.

MR. LAWRENCE: Oh, okay. Thank you.

THE COURT: Do you have the copy that I had underlined and highlighted? Hmm? Yeah. Go ahead.

All right. Go ahead, Mr. Lawrence.

MR. LAWRENCE: Okay. I'm directing the Court's attention to page 31 of Judge Hodges' order where he states "I want them to" -- he bifurcates the defendants into two groups. And -- but then he makes rulings on items (3), (4), (6), (7),

(8), (9), (10), (11), (12), (13), (14), (15) and (16) where he does not bifurcate the groups into -- the pension plan and General Motors. For example, number (5) -- excuse me -- number (7), for example -- item (7): "Defendants' Motion to Strike Plaintiff's Motion for the Court to Take Judicial Notice is DENIED AS MOOT". And now, he applies that to the defendants which means, if you look at the caption on the case, the defendants are General Motors and the Pension Plan. So in regards to items (3), (4), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15) and (16), are all violations of the automatic stay and that because he does not bifurcate. He just deals with the parties generically as plaintiffs and defendants. And so, he knew that there had to be a bifurcation between the two because he did that in items (1) and (2) and items (4) (sic) where he said, for example, on item (1): "Plaintiff's Motion for Summary Judgment is DENIED as to Defendant General Motors Hourly-Rate Employees Pension Plan". And he does the same thing on item (2) and (4) (sic). But all the other items, he doesn't bifurcate them.

It's my position that because he has made a ruling as to Defendant General Motors and Defendant Pension Plan that the ruling in regards to Defendant General Motors is in violation of the automatic stay. And what I'm asking the Court specifically to do is to either certify this matter to the district court as to the civil side of it; and then on the

criminal side, refer this matter to the appropriate U.S. attorney's office for his or her consideration as to criminal contempt of court under 18 U.S.C. 401.

In regards to my objections on omnibus number 82, and in the interest of brevity and the Court's time, I'll stand on my documents as filed.

THE COURT: Okay. Mr. Smolinsky, you may respond if you wish.

MR. SMOLINSKY: Your Honor, I think what the Court in Florida did was made factual findings that were necessary in order to reach the decision that there was no liability by the GM Pension Plan which is a separate entity. And I don't think that the findings of fact necessarily spill over to General Motors Corporation as --

MR. LAWRENCE: Excuse me, Your Honor. I can hardly hear counsel.

MR. SMOLINSKY: I'm sorry and I apologize. I'm a little under the weather today so it's a little bit more difficult for me.

But I was saying that we read the decision carefully. We believe that the findings of fact made by the Court in Florida support the ruling as against the GM Pension Plan, which is a separate legal entity from MLC. We obviously are very cognizant of the automatic stay and the importance to the debtors but we think that the decision doesn't even -- doesn't

touch upon a violation of the stay and, certainly, is not subject to this Court's contempt -- criminal contempt which the Courts have found relate to actions that occur in front of the judge's view. I think that Mr. Lawrence's source of remedy here is to go back to Florida and to appeal the decision of the district court, not to come in to this court.

THE COURT: All right. Thank you. Mr. Lawrence, any reply limited to what Mr. Smolinsky said?

MR. LAWRENCE: Yes. Thanks but no thanks, counsel, to the invitation because if I were to file a notice of appeal, and I think that's what you're hoping would happen but I'm not going to do it, I'd be in the same boat right now as Judge Hodges. I'd be looking at a criminal charge, possible criminal prosecution under 18 U.S.C. 401. And that I'm not going to do. Thanks anyways.

THE COURT: All right. Folks, because this matter is so straightforward -- can you hear okay, Mr. Lawrence, because I'm having problems with the microphones in my courtroom.

MR. LAWRENCE: I can hear you now. Thank you, Your Honor.

THE COURT: All right. Because this matter is so straightforward, I'm not going to make lengthy findings. By entering the order that the Florida Court, the Florida Court did it exactly by the book, did it exactly right. The case law is clear that the automatic stay does not stay proceedings

against co-defendants. See, for example, decisions by Judge Weinfeld and by the Second Circuit in Teachers' Insurance v. Butler.

Moreover, the Florida Court didn't violate the automatic stay as to our debtor, Motors Liquidation Company, because the Florida Court stated that the dismissal was subject to the right of any party to move to reopen the case upon a showing that the bankruptcy stay had been lifted or for other cause shown.

In other words, the Florida district court did it exactly the way the Court is supposed to. Therefore, although I also agree with the debtors' point that parties other than the debtor or a bankruptcy trustee don't have standing to complain of violations of the automatic stay, even if I were to assume arguendo that there were standing, I would issue the same two rulings on the merits that I just issued.

Accordingly, I determine that there was no violation of the stay and that the Florida Court's rulings vis-à-vis the nondebtor with respect to whom the Florida Court ruled were entirely appropriate and proper. Debtors are to settle an order in accordance with the foregoing. Since Mr. Lawrence isn't present in the courtroom, you're to do it on -- give him a full two weeks notice of settlement. Mr. Lawrence, your time to appeal from my ruling will run from the time of the entry of the resulting order and not from the time of this dictated

decision. And whether or not you choose to take any action in the Eleventh Circuit is for you to decide and I express no view on that subject.

Mr. Smolinsky, next matter, please. Mr. Lawrence, you may either stay on the phone or drop off as you prefer.

MR. LAWRENCE: Can I ask just one other thing, Your Honor --

THE COURT: I can't give you legal advice but it --

MR. LAWRENCE: -- because --

THE COURT: No. Time out, Mr. Lawrence. You can't speak over me. As I was saying, I can't give you legal advice but if you wish to ask a question of a procedural character, you may.

MR. LAWRENCE: I'm just concerned about my pending appeal. Are you going to rule on this omnibus now or are you going to let that stay until appeal is final?

THE COURT: Which appeal is that, sir?

MR. LAWRENCE: Excuse me?

THE COURT: Which appeal?

MR. LAWRENCE: I only have one appeal.

THE COURT: I can't --

MR. LAWRENCE: And that was your order.

THE COURT: Well, I can't -- I can't take an appeal of my own order, sir.

MR. LAWRENCE: I'm not asking you to take an appeal.

I'm asking you are you going to stay your hand because -- become divested of jurisdiction because it's on appeal, the matter.

THE COURT: I just ruled as I said I'm ruling. If you have a separate matter in the district court, I'm not going to tell the district courts in this district what to do. And if you have a pending -- if you have a pending appeal, as I sense you do -- one of the problems is that when things go up on appeal, we're not always currently briefed on their status. But if you have an appeal before the district court, whatever happens there is not anything I would be interfering with. And if the district courts issue a ruling that tells me what to do, of course I'm going to comply.

MR. LAWRENCE: Thank you for your time, sir.

THE COURT: Very well. Have a good day.

MR. LAWRENCE: You, too, sir.

THE COURT: Okay. Mr. Smolinsky, back to you.

MR. SMOLINSKY: Thank you, Your Honor. I think other than the fee applications, we only have one other contested matter. And I consider this a group.

We had filed, as Your Honor knows, omnibus objections to over 18,000 bondholder claims on the basis that they were already allowed by virtue of the claims that we allowed in the name of Wilmington Trust Company. When we filed the many motions seeking to expunge those 18,000 plus claims, we

received various phone calls and letters and informal objections. We were very successful in reaching out to those parties and to explain to them what it was that we were trying to achieve. And all of those objections went away but for six. And those six remain. We adjourned the motion with respect to those six objections and we want Your Honor to hear them today.

We believe that all six of these objections are really objections dealing with their lack of happiness about the fact that they've lost money in connection with the bonds rather than a substantive objection to the relief requested. These six parties either didn't respond to our phone calls and letters or refused to discuss it outside of the court context.

Your Honor, the six objections are from Dr. Helga Harm, Francis Caterina, Marianne Lisenko, Miguel Villalobos, Nick Zonas -- Nick and Diane Zonas and Sharyn Weinstein. I think our papers are very clear as to what we were trying to achieve and the basis for the relief requested. And, Your Honor, you've seen the objections and to the extent that these bondholders are here, they can speak as to their specific issues.

THE COURT: Okay. Are there such bondholders who would like to be heard? Would -- sir, would you please stand where Mr. Smolinsky is standing and take control of the microphone, please, and I'll hear you.

MR. CATERINA: Thank you, Your Honor. Our argument

is --

THE COURT: Well, before you begin, tell us your name so that --

MR. CATERINA: I understand.

THE COURT: -- when we make a transcript --

MR. CATERINA: I understand.

THE COURT: -- we know who spoke. And you may proceed.

MR. CATERINA: I am Joseph R. Caterina and I'm here on behalf of my wife, Francis H. Caterina. And I think she's omnibus number 49? Is that correct?

Ours is a simple argument, Your Honor. We filed a claim like all the other people and we litigated the claim as best we could. And then they made an omnibus motion to expunge all the claims.

THE COURT: Pause, please, Mr. Caterina. Am I right that your wife is a bondholder?

MR. CATERINA: That's correct.

THE COURT: Continue, please.

MR. CATERINA: I'm sorry. So we opposed this motion because we feel as if it's denying us our due process. We had two phone calls from the law offices and the last phone call they ended with "What do you want to settle?" So I came to court last month not knowing that the case was canceled and I filed my wife's authorization for settlement. And then General

Motors opposed everything that we did.

There's a uniqueness in our claim inasmuch as that we don't think that anybody can expunge everybody's due process by motion and it seems as if they want the Court to do this for them. The best I could find out was under 18 U.S.C. 241 and 18 U.S.C. 242 not being addressed to the various people of different colors and ethnic background but being addressed solely to the fact that under those laws citizens are protected from being denied due process. And General Motors is very adamant on stopping everybody's due process and proceeding with their motion. And we object to that.

THE COURT: Okay. Fair enough. Mr. Smolinsky, you may respond if you wish. It's up to you.

MR. CATERINA: Your Honor, I filed a rebuttal this morning down in the clerk's office.

THE COURT: Well, forgive me, Mr. Caterina, but --

MR. CATERINA: I'm sorry --

THE COURT: -- I have case management orders. I can't take papers --

MR. CATERINA: I understand.

THE COURT: -- filed on the morning of arguments. I think I understand the issues.

MR. CATERINA: All right. Thank you.

THE COURT: And --

MR. CATERINA: Am I finished or --

THE COURT: If you have any additional points that you didn't make in your objection --

MR. CATERINA: Yes.

THE COURT: -- yes.

MR. CATERINA: Under Miranda, Miranda states that "No rule or legislation can abrogate said rights" referring to constitutional rights. We noticed in the 363 transaction under which this whole bankruptcy operated that we were denied the right to trial by a jury as per the rules of that procedure. And we -- when we filed our original claim -- they're only one-pagers -- we reserved all our rights under Uniform Commercial Code because under the Uniform Commercial Code, you will find preserved your right to trial by a jury. So we questioned whether or not the 363 transaction is in violation of Miranda's noted decision that no rule or legislation can abrogate said rights and that legislation did just that. Then, by virtue of their motion to expunge everybody's due process, we believe that they're violating 18 U.S.C. 241 and 242.

So therefore, we feel as if as a bondholder we preserved our rights under the Uniform Commercial Code. And in the Uniform Commercial Code, we don't have these problematic issues on constitutionality of what's being done and what's not being done. In addition of that, under the Uniform Commercial Code, bondholders are secured investors. However, they rebutted by saying that the bondholders are not secured

investors.

Other than that, I don't want to belabor you in my enthusiasm for this argument.

THE COURT: All right, folks. Mr. Smolinsky, if you're willing to waive rebuttal, I'm in a position to rule.

MR. SMOLINSKY: That's fine, Your Honor.

THE COURT: All right.

MR. CATERINA: Should I go --

THE COURT: You can have a seat because I'm about to issue a ruling. And my ruling is more by way of explanation to you, Mr. Caterina, and to your wife because while I am compelled to and do sustain the debtors' objection, I want to explain it.

You, like thousands of other folks, you and your wife, Mr. Caterina, are bondholders. You have indenture trustees who filed claims on your behalf. To the extent that Motors Liquidation Company has the resources to do it, it's going to recognize the validity of its bondholders' claims. We all know that it doesn't have enough value in the estate to make anything more than a modest distribution on the claims. But because there are thousands of bondholders like you, Mr. Caterina -- or you and your wife, we have a system under which indenture trustees go to bat for you when they file a proof of claim on your behalf. So you don't have a separate right to recover on your bonds but your right to recover on your bonds

has already been respected because your indenture trustee went to bat for you.

Now we all recognize that there isn't enough money in the Motors Liquidation estate, as I said, to make more than a modest distribution to bondholders. But you're already going to get what you're entitled to. Therefore, since all we're talking about is what is, in substance, a duplicative claim, I don't need to speak to the fact that in bankruptcy you don't have a right to a jury trial, that on unsecured bond issues, I don't need to deal with what Article 9 or other aspects of the Uniform Commercial Code would provide.

So therefore, Mr. Smolinsky, you or one of your guys is to submit an order that says in substance that the objection to the claim is sustained but nothing in this order will result in the disallowance of the entitlement of Mr. Caterina or his wife or any of the other people to their entitlements on their bonds as filed by the indenture trustees in this case or words to that effect.

MR. SMOLINSKY: We will, Your Honor.

THE COURT: Very well. Thank you.

MR. CATERINA: Thank you.

THE COURT: Mr. Caterina, your time to appeal from this ruling, even though hopefully I gave you the peace of mind so that you understand that you don't need to, will run from the time of the resulting order and not from the time of this

dictated decision.

MR. CATERINA: I will not appeal, Your Honor. But I --

THE COURT: If you want to say something, you got to say it into a microphone, please. But understand that, in substance, you won. So you may not want to mess with what you got.

MR. CATERINA: These funds are in my wife's IRA account. In her IRA account, not even Morgan Stanley can settle anything without her written consent. The trustee has nothing to do with her IRA account. So how can somebody outside of her IRA account have the authority to make decisions on her financial future?

THE COURT: I'm not sure if that's the legal issue that's before me, Mr. Caterina.

MR. CATERINA: All right. Thank you for your concern.

THE COURT: Very well. Have a good day. Mr. Smolinsky?

MR. SMOLINSKY: Your Honor, one thing to note just for Your Honor's information, we have reviewed the Wilmington Trust stipulation. And it appears out of the twenty-one and a half billion dollars that there may be approximately fifty million dollars of original issue discount that was included in the calculations. FTI and the debtors and Wilmington Trust are

working on this issue. And we may before Your Honor with an amended stipulation which would adjust the twenty-one and a half billion dollar claim by no more than fifty million dollars. We just wanted Your Honor to be aware of that.

THE COURT: You do what you and the others consider appropriate. And if anybody has a problem with that, I'll give anyone an opportunity to be heard at that time.

MR. SMOLINSKY: Thank you, Your Honor. With respect to the other five, I don't know -- we should give them an opportunity if they're on the phone to speak.

THE COURT: Is any other bondholder on the phone who wants to be heard? I guess not. All right. My ruling, Mr. Smolinsky, should be deemed to apply to everybody. Say in baby talk for the peace of mind of the bondholders that it's without prejudice to the entitlements to recover under the proof or proofs of claim that have been filed by the indenture trustees.

MR. SMOLINSKY: We will, Your Honor. And I believe the orders that we had entered with respect to the others had similar language. But we'll -

THE COURT: Good enough. Thank you.

MR. SMOLINSKY: Your Honor, moving to the uncontested matters, item number B on the agenda, this is a motion by Weber Automotive pursuant to Rule 60(b) to reconsider our order with respect to debtors' omnibus objection to claims number 23. This was a motion seeking to expunge claims that were related

to contract damages based on the fact that the contracts were assumed and assigned to New GM. Even though Weber did not respond to that motion and a default was taken, in their motion for reconsideration, they raised the fact that there were certain contracts that were not assumed and assigned to New GM. We went back and researched those issues and, in fact, they're correct. So we have agreed to a stipulation which allows their claim to be resurrected notwithstanding the order that was entered by the Court subject, of course, to all of our continuing rights to object to that claim during the reconciliation process. And we'll submit that order to Your Honor.

THE COURT: That's fine.

MR. WILKINS (TELEPHONICALLY): Your Honor, Matthew Wilkins on behalf of Weber Automotive Corporation and Albert Weber GmbH. We have agreed to the terms of the stipulated order that Mr. Smolinsky wanted entered.

THE COURT: Fair enough, Mr. Wilkins. Are you about to move on to the next matter, Mr. Smolinsky?

MR. SMOLINSKY: Yes, Your Honor. Mr. Wilkins, you can choose. You can either stay on the call or you can drop off, whichever you prefer.

MR. WILKINS: I'll drop off and I appreciate being able to appear by telephone.

THE COURT: No problem.

MR. WILKINS: Thank you.

MR. SMOLINSKY: Your Honor, the rest of the agenda other than the fee applications relate to claim objections, omnibus claim objections filed by the debtors. It's a combination of claim objections that were on the calendar before that we've continued to try to resolve as well as omnibus claims motions 85 to 108 which are new motions.

As we have been trying to make it easier on Your Honor, we have attached to the agenda a schedule of those claims that were not seeking relief with respect to today either because we've decided to withdraw the motion after receiving additional information or we've agreed to adjourn to continue our discussions. And unless anyone wants to be heard with respect to that, we would suggest that we simply submit orders for those parties who did not respond to the motion and to address the other claims as identified on the schedule to the agenda.

THE COURT: Fair enough. Anybody in the courtroom who wants to be heard given what Mr. Smolinsky just said? No response. Anybody on the phone who wants to be heard given what Mr. Smolinsky said?

MS. MEYER (TELEPHONICALLY): My name is Patricia Meyer. And I'm not sure that I applied to work this motion in at the present time. My name is Patricia Meyer and my i.d. is 317595. And the case number is, of course, 09-50026. I filed

an omnibus claim against the Liquidation Motors (sic) and that GM was never held accountable for -- in the amount paid. Number one --

THE COURT: Pause, please, Mr. Meyer (sic). What was your claim for again?

MS. MEYER: For an omnibus objection against reservation orders. And my name is Patricia Meyer --

THE COURT: Well, I heard your name. But even though you repeated it, either because of the phone or my lack of understanding, I didn't get the substance of what your claim is for.

MS. MEYER: It's against the debtor, Motors Liquidation Corporation.

THE COURT: Well, I understand that. But what --

MS. MEYER: It's for recovery --

THE COURT: What is the nature of the debt?

MS. MEYER: Recovery. Fines for the indemnification in what we have done to prove what we have above General Motors Corporation and the bankruptcy.

THE COURT: What kind of investigation? What kind of recovery? I lost you.

MS. MEYER: It would be a personal recovery for the cost of our indemnification and what we have done with the government agencies and trying to work with General Motors through the path --

THE COURT: You mean, you want to be paid for having the government investigating General Motors?

MS. MEYER: No, sir. We took our claims to the government and to federal agencies and we have been in the courtroom before with General Motors. And so I filed an omnibus claim and wanted to bring it before you. And when he said that some of these issues are not cleared up, they may not be. I am coming before you as Patricia Meyer, a person who was -- who activated all the investigations.

THE COURT: Mr. Smolinsky, is that a claim that you want me to deal with today?

MR. SMOLINSKY: No, Your Honor. If I recall, this claim arises out of a whistleblower claim that Ms. Meyer has been trying to assert before the government with no success for several years. I don't believe that it's the subject of the motions that are on today. We will double check. And if Ms. Meyers (sic) wants her day in court with respect to her claim, we'll provide her with that opportunity.

THE COURT: Fair enough. All right. Ms. Meyer, do you understand what Mr. Smolinsky just said?

MS. MEYER: Yes. Do I deal with the Court for my -- just asking -- or do I have to deal with Mr. Smolinsky to put me on a time for a court hearing?

THE COURT: Well, for scheduling, I would appreciate it if you coordinated with Mr. Smolinsky or one of his guys.

If you agree to disagree on whether you have a claim, ultimately, the decision as to whether it's a good claim or not will be mine. And --

MS. MEYER: All right. And --

THE COURT: -- you'll have your day in court as Mr. Smolinsky said.

MS. MEYER: That is fair, Your Honor. And that's what we need. Thank you.

THE COURT: Very well. Okay.

MS. MEYER: I'll be looking for -- do I contact them? Is that my -- that's what I have to do now?

THE COURT: What I would suggest is that since I suspect it's going to be a busy day today, over the next few days arrange with somebody at Mr. Smolinsky's firm or if they haven't -- maybe it would be easier if they detail somebody who they would like to deal with you and talk about what to do --

MS. MEYER: That would be --

THE COURT: -- what to do next. I'm not making any substantive rulings today.

MS. MEYER: Thank you very much, Your Honor.

THE COURT: Okay.

MS. MEYER: I'll be looking forward to working with their firm.

THE COURT: Very well. Ms. Meyer, you may be excused from the call if you wish.

MS. MEYER: Thank you, Your Honor.

THE COURT: Okay. Next, Mr. Smolinsky? Or if -- was that the only person who spoke up when we invited people on the phone to speak up? Anybody else on the phone who wants to be heard? The record will reflect no response. Okay.

Your motion is, to the extent you wanted to push it against non-responders, is granted or, I guess more technically, your objections are sustained for the nonobjectors. They're continued for those who you said would be continued including Ms. Meyer.

MR. SMOLINSKY: Thank you, Your Honor.

THE COURT: Okay.

MR. SMOLINSKY: I think, as promised, that leaves the fee applications as the last matter to address today.

THE COURT: Okay. What's your recommendation --

MR. SMOLINSKY: How would Your Honor like to proceed?

THE COURT: -- as to how you want to proceed on that?

MR. SMOLINSKY: Perhaps we should start with the fee examiner who can give an update on where --

THE COURT: All right. I see Mr. Wilkinson (sic) coming up -- good morning, Mr. Wilkinson. I said Wilkinson. I meant Williamson. I apologize. I'm tired, Mr. Williamson.

MR. WILLIAMSON: Good morning, Your Honor. Thank you. Brady Williamson, the fee examiner in this proceeding. My colleagues from Godfrey & Kahn are on the telephone if their

involvement is needed.

Your Honor, the Court has before it twenty applications totaling approximately fifteen million dollars. We believe that we have resolved all but five. And with one exception, we further believe that those five turn on the two issues that we've highlighted for the Court in the summary that we filed. Those two issues, of course, being the question of hourly rate increases during the term of the case. And the second issue being the question of to what extent should professionals be compensated for dealing with the U.S. trustee and with the fee examiner on issues involving fees. And I think we've come to an agreement that using the shorthand "fees on fees" is a good way to describe that second issue.

Our memorandum to the Court outlined the case law on both of these issues. I think particularly with respect to the question of fees on fees, Your Honor, Professor Resnick and Henry Sommer tell us in their volume that there was a split of authority. There is indeed a split of authority. I think it reflects a tension between avoiding dilution of the professionals' work and their hourly compensation, on the one hand, and incentive or disincentive for preparing fee applications that comply with the letter and the spirit of the law. And that tension, I think, whether you agree with Judge Bernstein in Brous, B-R-O-U-S, or whether you agree with Judge Cudahy in In re Smith, that tension permeates the issue.

With respect to hourly rate increases during the term of this proceeding, or, for that matter, any other, in our report, Your Honor, we do not recommend a deduction of those. But what we do ask is, both retrospectively and prospectively, that the Court ask that professionals when they impose an hourly rate increase for associates, partners, paraprofessionals, that they provide, at a minimum, notice and an affidavit so that if an objection were warranted it could be lodged. We note that this Court in other cases has imposed that requirement at the outset of the case. It was not imposed at the outset of the case here. But we think given the magnitude of the amounts involved, in simply in the hourly rate increases for lawyer X, an increase from 450 dollars an hour to 525 dollars an hour, that kind of hourly rate increase can amount to real money. In this fee period, we think it's about 650,000 dollars attributable solely to the delta, the differential between an hourly rate in the preceding fee period and in this fee period.

So, in the first two cycles, Your Honor, we talked a lot about trees and forests. I think it's good news that we're here primarily this morning to talk about the forest, that being those two issues. Let me also note that there are tree issues involving both the debtors' counsel and the committee counsel. But I really do think that we can those to the extent they haven't already been resolved.

THE COURT: Pause, please, Mr. Williamson. And if I'm going to embarrass myself, I'll do it in front of a full courtroom. I spent all my time today preparing on the New GM issues with its dealers and on the rulings that I had issued yesterday in Chemtura and on the stuff I did last week on Chemtura and several of my other big cases. I'm underprepared on the legal issue as to the split in the authorities on the fees on fees issue although I'm generally aware of it.

What I'm not aware of, and I need your help and any opponent's help, is on the extent to which there is authority in this district -- because, as I've said a zillion times, I follow the opinions of other judges in my district except in cases of manifest error because I think that predictability in this district is of such great importance. I think you said there was a ruling on this by Judge Bernstein. And I think you also said there's a split in authority as Collier recognizes -- either Collier or -- you said Professor Resnick and I don't know if that's separate or it's just in Collier.

But what --

MR. WILLIAMSON: He's the new --

THE COURT: I'm sorry?

MR. WILLIAMSON: Excuse me. He's the new editor of Colliers. I was --

THE COURT: Right. I know him. What is the authority in the Southern District of New York on this issue?

MR. WILLIAMSON: The two most recent and two most significant cases, we believe, were both written and issued by Judge Bernstein. The most --

THE COURT: By Judge Stu Bernstein upstairs?

MR. WILLIAMSON: Yes, sir.

THE COURT: Keep going.

MR. WILLIAMSON: The most recent on August 24th of this year, In re CCT Communications. And it's cited in our papers and also in the papers filed by debtors' counsel and committee counsel. And then three years ago, another decision by Judge Bernstein, In re Brous, B-R-O-U-S, and again cited in the papers that the Court has before it. And I think it's fair in the interest of candor to say that the two cases are not automatically reconcilable because in one, CCT, the most recent, Judge Brous -- excuse me -- Judge Bernstein allowed -- permitted an award of fees for contesting, defending, whatever the right word is, a fee application against an objection. In re Brous, four years earlier, 2007 case, it was a Chapter 7 -- that may have some significance. Judge Bernstein denied the same request for fees on fees.

THE COURT: Pause. Did any one of these -- because it tends to boost admin expenses, tends to gore the ox of the remaining creditors like the unsecured community. Were there any particular facts in either Brous or CCT, which I assume was an 11, that would cause that to be unusually a matter of

concern?

MR. WILLIAMSON: CCT was a Chapter 11. It was a final fee application. And I think the Court felt that since the counsel had substantially prevailed -- I believe that's a magic phrase, "substantially prevailed" -- that the fees should be permitted. And that's -- in that same case, by the way, Judge Bernstein was quite, I think, forceful in saying that the review and editing of time records is not compensable which --

THE COURT: Well, I already ruled on that --

MR. WILLIAMSON: You did.

THE COURT: -- in one of the earlier cycles, if I recall. Okay. And I'm going to ask the question first of you, Mr. Williamson and I'm going to ask it of whoever has a different view of the world than you. Would you prefer that I rule on it based upon my general knowledge of the area or would you prefer that I defer ruling until I've been able to read CCT and Brous and any other authorities that people think are particularly relevant?

MR. WILLIAMSON: I would prefer that on the question of fees on fees, Your Honor, that you defer ruling because I think the issue is quite significant. And over the course of this case and others, has a significant financial impact. So that would be my preference. And I think between debtors' counsel, committee counsel and our work, the case law is there and about ten significant decisions, two from this district,

one from the Western District of New York. And I think it raises some significant philosophical issues, if that's the right term, in terms of this tension that I discussed.

THE COURT: Fair enough. I appreciate that.

MR. WILLIAMSON: And, Your Honor, in our memorandum, we basically suggest the Court has three choices: approve them all, approve none or accept our admittedly pragmatic suggestion of fifty percent which is, as the Court recalls, what it did with respect to the issue of preparing not fee application but preparing time records.

THE COURT: Well, if I heard you right, though, based on something you said before, I'm wondering if there's a fourth alternative which is to look at it, as you described Judge Bernstein's ruling in CCT, to make perhaps not an excruciatingly detailed analysis of the merits of the underlying dispute that caused counsel -- or presumably it applies to professionals generally -- to defend their request or to see whether they were defending themselves because ways in which, for lack of a more delicate word, they screwed up or whether they substantially prevailed or whether this was on cutting edge issues or perhaps some alternative approach.

MR. WILLIAMSON: There are two difficulties with that, it seems to me, Your Honor. The first is that would not place an appropriate value on either the prophylactic effect of the fee review process nor would it take into account the

process itself in that, as the Court knows, we start with a letter raising questions, the professionals respond, we winnow, hopefully, the number of issues down. And the use of the term "substantially prevailed" I don't think does justice to those other two categories.

I would also point out that --

THE COURT: Pause, please, though, Mr. Williamson, because while I can see that you and perhaps other folks might contend that that's not the best approach, if one goes with the judicial philosophy that I've papered in close to a dozen written decisions, do you think that kind of approach would be manifest here if Judge Bernstein did that? And I'm wondering if certainly due diligence would require me to read his decision. But unless I conclude that he blew it, I got to tell you, my tentative would be to follow a colleague in this district.

MR. WILLIAMSON: The difficulty with that, Your Honor, is, I think, Judge Bernstein has been of two minds because if you look at the bottom line result in each of the case -- each of the two cases, they are --

THE COURT: You're respectfully suggesting they can't be reconciled.

MR. WILLIAMSON: Yes, sir.

THE COURT: Okay.

MR. WILLIAMSON: They can be distinguished. One is a

7, one is an 11. And it's interesting, Your Honor --

THE COURT: But they're both under 330, I assume.

MR. WILLIAMSON: Yes. It's interesting, Your Honor, that, if you look at the basket of cases, ten or twelve of them, each of the Courts that have addressed this have said here's my rule, no fees for fees except in exceptional cases. And then the other Courts that have come out the opposite way have said fees on fees are approved, parens, except in exceptional cases because the Courts in the latter basket are concerned, I think rightfully, about a lax or relaxed approach to the fee process which then results in professionals who don't devote appropriate diligence being compensated while they do what, one would argue, they should have done in the first place.

THE COURT: I understand. Okay. Is it time to give your opponents a chance to be heard or did you have further points?

MR. WILLIAMSON: Only to note, Your Honor, that the question about hourly rate increases can be addressed not at least at this hearing in a quantitative yes or no approach but rather simply to direct that professionals who raise rates during the course of a proceeding provide a notice of that and, if anyone chooses to be heard, not just the fee examiner or the UST, that they have an opportunity to do that.

THE COURT: Okay. Thank you. Who would like to be

heard? Mr. Smolinsky?

MR. SMOLINSKY: Thank you, Your Honor. Joe Smolinsky of Weil Gotshal for the debtors.

Let me start with the two cases that the fee examiner has mentioned and let me just raise a very significant distinction. I believe in the CCT Communications case, that was an analogous situation where there was a fee examiner in the case and the Court found that the law firm substantially prevailed and denial of the defense costs would simply dilute the award.

In the Brous case, you had a creditor, a third party creditor, I believe Bear Sterns, that took issue with the reasonableness of the fees in a single, stand out dispute and was successful in that dispute and the Court found that the professionals should not be reimbursed for defending that fee application.

I think it's very different because we are, as Your Honor knows, subject to quarterly forensic audits, effectively, of our fee applications. There is not a standing dispute as to the reasonableness of the fees in this case. This is simply a quarterly analysis, under very different standards than third parties outside of bankruptcy or clients outside of bankruptcy would typically be engaged in.

Your Honor, we take no issue with the way that the fee examiner has approached these issues. I think that he's

been fair in how sets out the issue. He acknowledges the fact that there are cases for, cases against. Ultimately these are policy issues and I think that's hugely significant here.

The question is whether my firm and other firms should be penalized for establishing policy in this case, which ultimately starts the process of a national movement to modify the way that fee applications are dealt with. And respectfully, I believe that that discussion should happen in Washington, not necessarily in this case. I don't think the fee examiner specifically points to any rules or judicial precedent for what he's looking for here.

THE COURT: The underlying problem, isn't it, Mr. Smolinsky, that every time one of us even issues a dictated decision it acquires a life of its own?

MR. SMOLINSKY: That's right, Your Honor. And ultimately, these issues may be appealed not for purposes of this case but for purposes generically.

I think the American rule, which is what this is about, especially in the context of cases like Brous where you have a creditor challenging the debtor and saying the debtors' estate should not pay for this, I think has no place here. These are policies. Again, they are not challenges to the reasonableness of fees.

The American rule is very much about each party paying its own way and evaluating whether the costs of bringing

up the issues are outweighed by the risks associated with doing so and the benefits that could be incurred by proceeding.

They don't deal with single issues. They deal with whether or not we should publicly announce our fees rates to the world whenever we increase rates and things of that nature.

I would note that the examiner, the fee examiner, has no client here other than the United States trustee and the U.S. government. That makes it very easy to take on issues outside of the typical American rule. I don't think that the American rule would see a situation where an eight-page response would be filed with respect to a fourteen dollar expense dispute, which was the case of Legal Analysis Systems' fee applications.

So this is very much about the estate, in this case, paying for a determination of policy issues. And if the estate is going to be paid for those claims to be pursued, those challenges to be pursued, then it should pay for the costs of the determination of whether that policy should be invoked.

With respect to the fee rates and the increases, I would only add that law firms such as Weil Gotshal are very sensitive to announcing when rates are increased publicly. We, in our fee applications, provide enough information to understand what rates of lawyers that are working on the matters when they increase.

THE COURT: Pause, please, Mr. Smolinsky.

"Sensitive" is subject to a double entendre. It can mean that you're already ahead of us in making that information known or it could mean that it's sensitive in the sense that it's something that you would prefer not to disclose. Which of the two meanings am I supposed to draw from this one?

MR. SMOLINSKY: We would prefer not to disclose, in the public forum, the way that the fee examiner requests. Understand that the -- when we increase rates, as we did here in January and we do put into place annual increases, that this is not a GM issue. This is not a restructuring department issue. This is a firm-wide decision to raise rates and that's consistent with our obligation to charge the same rates that we charge our other clients.

What the fee examiner is asking for is to file a public affidavit every time the firm increases rates, setting out each --

THE COURT: Well, is he saying that or is he saying every time the firm raises rates in a case in which the creditors of the case are going to have to pay?

MR. SMOLINSKY: Well that's certainly not the case here, Your Honor, because the creditors, the unsecured creditors of this estate are not paying the fees. Interestingly enough the U.S. government is on both sides of this issue.

THE COURT: So you're saying I should issue a Bush

vs. Gore ruling which is not a precedent for anything except the exact matter that I have before me? I tend to believe that I should go by, kind of, like a rule of law.

MR. SMOLINSKY: We have no problem providing the Court, providing the fee examiner with a schedule of rates when they're increased. But the media is the media and what Your Honor would be starting is a precedence where every major law firm would, once a year, publicly file in the bankruptcy court their new rate schedule. And that would be -- that would just become a circus which I don't think this Court intends.

The purpose of the notice is to provide information about the reasonableness of fees and the rates. That information is already provided. Every time we file we provide a monthly fee statement or a quarterly fee application. In our summary in the beginning it sets out the rates of each professional. And to the extent that the fee examiner has some need to tick and tie old rates to new rates, we're happy to provide that information to help him do that.

I think the notion that every large law firm now has to, once a year, file in every Chapter 11 case in which they perform services an affidavit that they had a firm-wide rate increase, I think is a little overboard and creates a precedent that I think is not healthy. So I think when you look at the American rule I don't think that it's really appropriate here. The fee examiner -- the U.S. trustee has delegated a portion of

its duties to the fee examiner paid out of the estate to pursue policy issues and general issues, which we have to respond to. And these quarterly audits are significant, they're substantial, they're expensive to comply with and ultimately it would just create an automatic discount to our fees if the examiner was allowed unlimited access to the debtors' coffers and we were forced to pay, on our own dime, for responding.

THE COURT: Okay. Fair enough. Others want to be heard on this? Mr. Schmidt?

MR. SCHMIDT: Thank you, Your Honor. Robert Schmidt from Kramer, Levin, Naftalis & Frankel on behalf of the creditors committee.

Your Honor, we're pleased to report that we were able to work out, as Mr. Williamson reported, virtually all our issues with the fee examiner. It took a lot of effort but we got there.

The issue that remains is the fee on fee issue for us, which I won't retrace the arguments made by Mr. Smolinsky. We certainly agree with his arguments and we believe that we should be compensated for the amounts charged in that regard.

I would add, Your Honor, with respect to the committee's issue here, it took on particular importance because as the Court may recall the fee examiner took a very aggressive approach with respect to the duties that the committee performed on a variety of important estate issues,

including environmental claims, the DIP and wind down claims, collateral review. And he really, aggressively, went after the fees that we incurred in connection with those very important projects and we felt we had to vigorously oppose his objection to our fees on that front and so we did expend significant time and effort on that front.

The Court heard the arguments during the April 29 fee hearing so I won't rehash them. And I believe we did substantially, ultimately substantially prevail wherein we ended up taking 114,000 dollar reduction on a 4.5 million dollar fee application. So I think, if you do the math, that is certainly a very modest reduction for a fee application and we believe that it does evidence that we did prevail and that would comport with the rulings in, certainly, Judge Bernstein's CTT case.

THE COURT: Got a different question for you, Mr. Schmidt, because one of the things that I've wrestled with over the last week was your constituencies differences in perspective with the U.S. government in which I understood, I think correctly based on what was presented to me at least, that the unsecured creditor community in this case is subject to a dilution risk if the admin expenses in this case get too high. And while I had assumed, and you just confirmed, that you would agree with Mr. Smolinsky on the fees on fees issue, I'm wondering if you want to weigh in on the issue of increases

going forward?

MR. SCHMIDT: Your Honor, if I may, before I get into the increases, the increase in the potential administrative claim base is not necessarily diluted; it's really the unsecured claims base that's diluted. The only time that you get into an issue on the administrative claims base is if we blow through the wind down budget.

THE COURT: Right. But I thought that was enough of an issue that I should be paying attention to it.

MR. SCHMIDT: Fair enough, Your Honor.

THE COURT: So if you're not taking a position on the second issue all you've got to do is tell me that, but I don't know what your position is on that.

MR. SCHMIDT: Your Honor, on the rate increase issue I would just simply note that yes we do periodically assess and increase our rates. We acknowledge that and make it clear in our initial retention papers that we implement step-up increases for associates on a yearly basis and come the end of the calendar year, assess the marketplace and determine whether to make additional market driven increases, which we do from time to time.

If it's a matter of providing a list to Mr. Williamson in advance, that's certainly not a problem for us. But we do note that we take that position up front in our retention application.

THE COURT: Now as far as I know every firm does, doesn't it?

MR. SCHMIDT: I believe that's fairly standard.

THE COURT: Okay. Mr. Reinsel, any of the other official committees or your firm want to be heard on this? I guess I only have one other official committee, which is you.

MR. REINSEL: Your Honor, Ron Reinsel, Caplin & Drysdale, for the asbestos committee. I think we would just join with the debtor and the committee.

THE COURT: Fair enough. All right. Anybody else want to be -- Mr. Seidel?

MR. SEIDEL: Yes, Your Honor.

THE COURT: And then I'll give you a chance, after that, Mr. Masumoto.

MR. SEIDEL: Good morning, Your Honor. Barry Seidel of Butzel Long, we're special counsel to the creditors committee, as you know.

I just stood up to answer the question that Your Honor addressed before anyone made remarks, which is whether any of us were interested in having you deliberate further on the issue or have you rule on general knowledge.

Your Honor, I know that before you sat on the bench you were a long-time practicing lawyer. I personally believe you are familiar enough with the law and certainly the facts in this case to make a ruling without further deliberation. So I

join with Mr. Smolinsky and Mr. Schmidt on the issue of fees on fees.

THE COURT: On the merits of that issue.

MR. SEIDEL: Yes. And as to the other issue, we're not affected by that.

THE COURT: Fair enough.

MR. SEIDEL: Thank you, Your Honor.

THE COURT: Okay. Anybody else want to be heard for a first time? Mr. Williamson, I'll hear from you in reply if you have any limited to what your opponents said in their remarks after you. Oh, I'm sorry Mr. Masumoto. Go ahead.

MR. MASUMOTO: Your Honor, if you don't mind?

THE COURT: No disrespect. Come on up, please.

MR. MASUMOTO: Good morning, Your Honor. Brian Masumoto for the Office of the United States trustee. Your Honor, as indicated in our papers, we do support the fee examiner's recommendations with respect to the various fee applications. However, we did also want to stress that, as highlighted by all of the parties who have spoken previously, there were two major matters of concern that we would like to articulate our position on, which are the rate increases and the issue referred to as fees on fees.

With respect to the rate increases -- I'm sorry; before I get into that I would like to respond to a comment made by debtors' counsel. The U.S. trustee did not delegate

any of its responsibilities to the fee examiner. In fact, as Your Honor may recall, the appointment of a fee examiner was based on a consensual arrangement among the parties, including the debtors' professionals and the committee. And as Your Honor knows, fee examiners have been appointed in a number of cases.

This attempt at utilizing a fee examiner is not to absolve the U.S. trustee from its responsibility to examine the fee applications because we do, regardless of whether fee examiners are appointed or not, we do examine the fee applications. However, I think it's quite apparent that given the nature of the very large mega cases that exist, that the amount of resources available by the U.S. trustee cannot be measured or cannot be compared to the resources of a dedicated fee examiner.

So I would like to indicate that the fee examiner is not just merely a tool for the U.S. trustee but for the Court, as well as the various estates, to insure that the expenses, fees and expenses, meet the criteria set forth in the statute.

With respect to the two major issues, we certainly have no quarrel with respect to rate increases. We have no quarrel with the approach of providing notice and an opportunity to be heard. However, we did want to articulate a major concern that there be no ambiguity or misunderstanding that whatever notice is provided, whether it's provided prior

to fee application or at the time of the fee application, the true test of determining whether or not the fee increases are reasonable can only be fully and accurately examined or evaluated in the context of a fee application. So for example, if in fact the Court imposes a requirement that notices be provided at the time the increases occur, which may not coincide with the fee application. That whatever issues are raised or highlighted or if none at all, it does not estop or preclude further examination in valuation at the time of the fee application. I believe that all of the cases that referred to rate increases and so forth were, in fact, examined in the context of a fee application.

So, I guess, in some respects, it might be similar to the monthly compensation procedure in which monthly invoices are issued, payments are made and objections can be raised. However, no objections are waived at the time of the fee application. So similarly, if in fact advanced notice and an opportunity to be heard is required and/or allowed in any of these cases, we would certainly maintain or reserve our right, one, to be able to evaluate it in the context of a fee application as well as reserve our rights based upon, perhaps, that advanced notice, to engage in any appropriate discovery regarding those rate increases.

Second, moving on to the issue of fees on fees, I think the parties have outlined the various split in the case

law in the southern district. I would like to indicate that I believe that Judge Bernstein, essentially, is applying a similar approach, I think, even across the board, on both sides of the divide. I believe there's an element, at the polar extremes. One is that on one hand you want to discourage improper fee applications, you want to encourage compliance; you want to make sure that it gets done at the same time. At the opposite extreme is not to penalize professionals for frivolous or vexatious type objections to fee applications that are raised as part of a strategic matter.

And I think the Courts, in struggling to address those, will come out one way in one case and the other in --

THE COURT: I think you may have nailed it, Mr. Masumoto but if that is the kind of thought process that I or another judge would go through would Judge Bernstein's approach represent the sweet spot in achieving that balancing?

MR. MASUMOTO: Well, I think Judge Bernstein -- yes. In response to your question I think it does because if you look at Brous I think the conclusion was that the objections were valid, the objections to the fee applications and the defense of the fee applications were valid and the creditor who raised the objections prevailed. In the CCT Communications, the Court determined that the objections were not valid and that the fee applicant had properly defended the contents of its fee applications. I suppose in some respects it was a form

of -- as Judge Bernstein mentioned this is, sort of, the application of the American rule. However, the distinction that we want to make with respect to the current fee application and the trustee's recommendation is that the trustee's recommending a fifty percent.

THE COURT: Five-zero.

MR. MASUMOTO: Right. A five-zero percent and that is an approach which is a compromise, sort of a realistic compromise, and I think consistent with Your Honor's ruling with respect to the second interim fee application.

The concern that we have in the application of that fifty percent, that the prophylactic portion for, what I believe all the courts have indicating, including Your Honor in the second, is the concern that the estate not be saddled with the correction of mistakes and failures or omissions.

Hypothetically, part of the issue and the difficulty Your Honor encountered in the second interim is that some of the issues raised had not been really fully developed or articulated by the courts in other cases. In fact, Your Honor was concerned that applying a rule retroactively would penalize the applicants and I believe, in part, that that's justified or at least a warrant of the fifty percent application.

The concern, I think, as Your Honor articulated even in that ruling is that once the courts start to rule and establish the parameters going forward with respect to these

fee applications, that ignorance should no longer exist and that latitude should not longer exist.

So, theoretically, as we move forward and the experienced increases amongst the professionals, presumably the reviewing and having to deal with some of the issues raised, Your Honor's concern about checking, I believe you raised a concern about privilege reviews and the amount of details that are necessary to address the privilege issues in the bankruptcy cases which don't exist in non-bankruptcy cases, that as that experience develops in fact what you may see is that perhaps a smaller amount of time necessary to review and correct and edit the time records which, I believe, Judge Bernstein and even Your Honor has ruled should not be compensated because that's not available to non-bankruptcy practitioners.

So what's left is, in fact, correcting mistakes. A large portion that will be left is the debtors' -- not debtors' -- I'm sorry -- the professional's response to criticisms or objections and corrections. So if a fifty percent rule is applied in that context, a larger and larger proportion would presumably be for correcting errors and those, I think, the Court has been quite adamant, I mean, in an attempt to try to eliminate the compensation for correcting errors you applied in the context, given the nature of the unknown factors, uncertain case law, the fifty percent rule didn't make sense because arguably fees that would have been

compensated you reduce by fifty percent. And although there were fees that should not be included at all, which are the correcting and dealing with omissions, that portion of the fees which would not be permitted at all would still also suffer a reduction.

But I think, on balance, I think the Court's determination was the results achieved effectively eliminated any possibility that a firm would benefit by correcting its mistakes.

Our concern is that unless there is that absolute deterrence, there's always an incentive not to comply or at least not intentionally not to comply but not be as careful because it doesn't matter. Even if you get only fifty percent of the correction, you're still, in fact, increasing your recoveries and still don't have to spend the time complying completely with the case law.

Now I believe that there has been, in fact, some difficulty in applying all of the different considerations from Your Honor's second interim fee application ruling, in the sense that if the fifty percent rule apply not only to the fees on fees but the actual deficient fees, that, again, increases the deterrence for not having compliant time records.

If in fact it only applies to the time records that are under question, the actual fees on fees, then the level of deterrence is certainly not as high.

Our main concern is that however the rule is applied, whether or not the Court applies a fifty percent rule in terms of taking the overall picture, including the fee applications, that there be a complete deterrence from not complying with the rules. Anything less would encourage a -- it would reduce the prophylactic effect of any rule. And that is, I guess, from our perspective our departure from the, sort of, I guess, pragmatic approach of the fee examiner.

We do want a rule that maintains a hundred percent deterrence against non-compliance.

THE COURT: Mr. Masumoto, that analysis in a lot of ways advances the ball. So let me ask a couple of follow-up questions on that. The first is that, as Mr. Smolinsky observed and I think he was right, there is a certain cost associated with responding to inquiries, and in some cases objections, irrespective of whether your fees were justified or not, kind of like a mandatory cost imposed upon the professional for playing -- not playing, for complying with the informational requirements that are imposed upon it and, in some cases, for justifying the propriety of its fees even if it did nothing wrong.

And then there is a second layer above that, the cost of responding to its screw ups or its failures to comply. The points you made, for the most part, apply to the second half of what I said rather than the first, I would think or do you

think I'm off base in that regard?

MR. MASUMOTO: I think that's right, Your Honor. And to address the first point, one, as, sort of, a primary and basic matter, I believe that the courts have held, and I think it should be an important principle to, sort of, hold to which is that the burden of proof is on the fee applicant. They have the burden to justify the reasonableness and necessity of their fees and expenses. If they fail to do so, triggering or requiring further inquiries, they should bear the cost.

Now once again, we have the opposite extreme. If someone is undertaking a frivolous or vexatious type of inquiry, clearly, I think, most courts and certainly the U.S. trustee would feel that in order to defend against that type of tactic that the professionals should not be penalized.

THE COURT: And presumably, if you use a substantially prevailed type of approach, then the professional wouldn't have to eat the costs of defending against that frivolous attack.

MR. MASUMOTO: That's correct, Your Honor. I would also -- I'm sorry.

THE COURT: No, finish your thought but I have another one after that, Mr. Masumoto.

MR. MASUMOTO: The other concern that I had, in terms of the inquiry and so forth, is to note, Your Honor -- as Your Honor knows, having practiced for so long, prior to the advent

of the electronic filing all fee applications were, in its entirety, available to the public. They were filed with the court in hard copy and were available to individuals to examine.

After the advent of electronic filing, given the size of the files that were necessary in some cases for fee applications, as Your Honor probably is aware, not all the time records are actually on file. They're not universally available to anyone who wants them. They're available upon request from the professionals but in the very large cases many of the professionals with very voluminous time records do not file them online. They will file the narrative and the schedules but the actual time records are actually not online. And so if Your Honor is perhaps concerned about inquiries from people who might want an opportunity to review time records, that's in fact a function of the system and the parties.

I believe some of your colleagues have required, even in the mega cases, that the fee applications, the actual time records, are filed online. I believe sometimes the mechanism is used that the monthly compensation invoices have to be filed online and therefore would be available for review at the time of the fee application. But in many cases, I believe, in many of the large cases actual time records are not universally available.

So any inquiries regarding time records and detail

and so forth that may be raised by interested parties isn't at a cost upon the professionals but certainly, it seems to me, a choice and a function of how they approach the filing requirements.

THE COURT: Mr. Masumoto, when you study physics you learn about the Heisenberg Uncertainty Principle, which it's been a long time since I studied physics but I, kind of, capture it by saying that by measuring a phenomenon you alter it. And while subject to review of the cases my inclination might well be to have some kind of merits-based evaluation, at least beyond the requirements of dealing with the objection at all, what I mentioned a moment ago, that has merits to it but there's also an expense associated with getting into that merits-based inquiry. And I would be a little nervous about establishing a regime under which the creditors of the cases on my watch are paying more for the precision than they're getting in the way of benefits of the merits-based fine-tuned analysis. Do you want to comment on that trade off?

MR. MASUMOTO: Yes, Your Honor. It is unfortunate, as Your Honor indicated, that perhaps individual estates might have to bear that additional cost. However, in those cases where the cost is borne by a particular estate, they become and serve, I think as Your Honor noted in your decision regarding the second interim fees, as standards to be applied going forward, eliminating the excuses on the professionals.

Just as a really practical example Your Honor, as Your Honor knows if you look at -- one of the review functions that you have, a simple one, you can't bill more than twenty-four hours a day. I mean, it should be -- no one should be billing more than twenty-four hours a day. I believe that the fee examiner, in some of the earlier fee applications, based upon the mechanical software available to Stewart Maue, was able to identify applications in which there were timekeepers who billed more than twenty-four hours a day. Now should that ever occur? Shouldn't the law firms, in preparing their fee applications, have checking functions that would screen that out?

Another example is the compromise that was reached with respect to overtime meals and expenses. I believe at the last interim application, I don't recall the exact amount, I think it was either five or six hours, but the idea is that if someone billed, for the debtor, less than five hours of work for that day they shouldn't be entitled to an overtime meal and/or a cab ride home.

Now I can tell you that as far as I know Your Honor, I don't know of any law firm that has any software in effect that can do that checking. Now the fee examiner was able to utilize the services of Stewart Maue and in fact could make that cross reference very easily and could screen that out.

Now if Your Honor ruled in the cases that it's

impermissible to have a time keeper bill an hour or two a day, open up the file at the end of the day and then ask for a meal and/or a cab ride home and the firms know that that is the standard, then how difficult would it be for those firms to implement a checking procedure to require it. I'm aware, at least with respect to one applicant when the issue was raised, said that their software prevents anyone from requesting or putting in for a fee reimbursement without any time records. However, it didn't specify the amount. It didn't say if you only have less than five hours you can't bill something. But that was an effort.

Now if in fact Your Honor ruled and other judges ruled and enforced a rule that you can't bill for time -- for overtime expenses without a certain minimum amount of time billed to the estate, then presumably the firms would implement that procedure.

So I understand that in individual cases one might see, perhaps as Your Honor indicated, an absorbing of additional costs in order to justify it but I think, in the long run, it would serve as, sort of, an emerging standard to impose upon the firms so that in fact the concern -- if we had to do it in every case I agree with Your Honor, it may be unfair to impose that burden on every individual case. But once the Court establishes procedures, and the Court has done it, in fact that's the reason for the southern district

guidelines and the various local guidelines, where the Court attempts to impose standards on the law firms to prevent perceived abuses.

So I cannot -- I cannot say or evaluate the benefit in an individual case that has to bear that particular cost, but for purposes of insuring, in general and certainly for future cases, a standard avoiding abuses, I think it is part of the cost that the system, in general, has to bear.

THE COURT: Okay. Thank you very much, Mr. Masumoto.

MR. MASUMOTO: Thank you, Your Honor.

THE COURT: Mr. Eisenband?

MR. EISENBAND: Thank you, Your Honor. Michael Eisenband with FTI Consulting. I guess my situation is a little unique. I'm not -- obviously I'm a financial advisor, not an attorney, so I'm going to leave it to the attorneys to talk about case law. But I do want to talk about the fees on fees because even though FTI is billing on a fixed fee basis and does not charge any extra for the time spent on responding to fees, that has not stopped the fee examiner from proposing a 57,000 dollar reduction to FTI for fees on fees.

And it comes to the issue of what I believe is a frivolous objection and I think the objections in this case clearly are frivolous for two specific reasons. First, as I stated, FTI is not billing any additional time for any hours spent on defending any of the objections. If FTI didn't spend

the time, the fees would still be the same amount, so we're not billing.

And the second one, I would just like to read from, actually, an excerpt from the first hearing, Your Honor, something that you said talking about, and this I quote from you, Your Honor, "FTI argues that its fee was based on a fixed fee arrangement and that when FTI did more work, as it might, FTI wouldn't get any more compensation for doing so."

You said, referring to the fee examiner's position, you stated, "I've never seen this position taken in the thirty-seven years since I started the bankruptcy business. I agree with FTI as to this issue."

That was on the first fee application. We had to deal with their objections on the second fee applications on the same issues and now we've had to deal on the third application.

Now I understand the fee examiner has an important role and certainly FTI is aware that the fee examiner is and should be looking at FTI's fees. But to propose objections to hours spent on FTI's fee application, when we're not getting paid for these additional hours, to me is certainly frivolous and I think it puts into question -- the judge has actually ruled on this issue, as it pertains to FTI. Yet the fee examiner is spending more time, the estate's money, on objecting to FTI's issue. The fee issue is just one, there is

also objection, and you might have seen it in their objection and our response, that we're sending too many people to meetings, even though we're obviously not billing by the hour and those are different issues that maybe we can talk about after. But that's all I wanted to say on fees on fees.

THE COURT: All right. Anybody else before I give Mr. Williamson a chance to reply?

THE COURT: All right. Mr. Williamson?

MR. WILLIAMSON: Thank you, Your Honor. Let me address, very briefly, FTI's expression of concern. In each of those first two bench decisions the Court also noted that there would come a day, at the end of this case, when even fixed fee arrangements are subject to review and the case law is quite clear that the hourly rate, as computed within a fixed fee, is a relevant factor. So yes, we pay attention. Yes, we called things to FTI's attention, including some of the expense issues that this Court has dealt with.

Now let me turn to the two principle issues. The debtors' counsel used the phrase public policy issue. And that's not a phrase that should frighten anyone because both of these issues are inherent, embodied in the term reasonableness. If a professional submits a deficient application should that professional be paid from the estate to remedy deficiencies, errors, mistakes, misstatements that shouldn't have been on an application to begin with?

If a professional, during the course of two fee periods, raises an associate's rate by almost a hundred dollars an hour, that goes to the question of reasonableness. And in the interest of the professional, it's either a reasonable increase now or it isn't. And it is possible, by comparing the hourly rates listed in the first application and the third application, to determine when there's been an increase. So given the Code's commitment to a public transparent process, I'm not quite sure of the validity of that concern.

In the two cases Judge Bernstein decided it was a very finite question, very finite objections, one application. Here we have twenty and by the end of the case we may have twenty-five or more.

My concern, Your Honor, with the phrase substantially prevailed is that while it appears talismanic, it isn't. And the reason it isn't is because I, for one, don't want to be at this podium arguing with my colleagues about whether the fee examiner or the UST prevailed on a particular point of disagreement. I don't think the Court would look kindly on that kind of discussion, and with good reason. And of course we're left with the inherent problem that my computation of the fee examiner's batting average might be somewhat different than my friends at counsel table's computation of the batting average of the fee examiner, especially when you take into account the prophylactic issues that the U.S. trustee's office

very ably discussed.

It's not my responsibility, I don't think, to give a report card but there is no doubt that incrementally, taken as a whole, the fee applications submitted to this Court have improved significantly and the best example of that is the fact that we are here, by and large, talking about the forest and not individual trees.

You know, I don't know if this case is a perfect vehicle for having some of these issues decided but the fact remains that this case, unlike Lehman Brothers just to pick one, involves taxpayer dollars directly. The Code doesn't say anything about cases funded by tax dollars, but I think that that is a very real issue here. Because we're not simply dealing with a company, its shareholders, its creditors, we're dealing with taxpayers, we're dealing with organized labor, we're dealing with huge pension funds, we're dealing with incredibly environmental and asbestos problems. And so I think the integrity of the process is important here, whether or not we set the dinner ceiling at twenty dollars or whether we set the dinner ceiling at thirty-five dollars.

The Court asked about precedent. Judge Peck, in Lehman Brothers, has these issues pending before him right now. To my knowledge, as of this morning, he had not issued any decisions and, in fact, he may not even be writing a decision.

THE COURT: When you said these issues, did you mean

both of the issues on today's calendar or the fees on fees issue?

MR. WILLIAMSON: Both. And they've arisen in Lehman Brothers in this context. Lehman Brothers, of course, has a fee committee and the fee committee has recommended a one percent of gross fees absolute ceiling on all fee-related time. Call it what you will, anything to do with fees is compensable only to one percent.

THE COURT: I think I ruled on that before, didn't I? And -- or at least in oral argument thought that arbitrary percentages were a matter of concern to me?

MR. WILLIAMSON: Yes, and we have not proposed it. I'm simply addressing the Court's request for what's happening in this district; to the extent we know it. And the hourly rate increase has been addressed by the fee committee with a recommendation that fees be frozen at the 2009 rates. In other words, that there be no increase in 2010.

Now Judge Peck has not ruled on those but the recommendations of the fee committee in that case, I think, are quite clear. And whether either of those approaches, one percent or no rate increases, is the right one, these clearly are issues that transcend this particular case.

Getting back to the point, and I'll conclude quickly Your Honor, about substantially prevailed. The Court used the phrase well what if it turns out that the fee examiner or the

UST raised an inquiry, made an objection and there was, in the Court's words, "Nothing wrong". The problem with that approach, of course, is putting aside the Court's determination not, hopefully, ninety-eight percent of what we have in our dialogue with the professionals is not about whether something is wrong or nothing wrong, it's whether in a rational, deliberative process we can come to a conclusion and in most cases we've been able to do that.

This Court has often said, in a different context, still this case, it's not a question of whether professionals should be able to travel first class. It's not a question of whether professionals should be able to dine beyond twenty dollars a meal. It's a question of who pays that price, who bears that burden. And that's, I think, a concern with this talismanic approach that may have had appeal in a narrow case where there was no fee committee and no fee examiner but probably won't work here.

THE COURT: Very well. Thank you.

MR. WILLIAMSON: Your Honor, before the Court -- let me just note one other thing. I have a scheduling matter that I'd like to raise at an appropriate time; it should only take thirty seconds.

THE COURT: All right. Mr. Eisenband, is it really important?

MR. EISENBAND: I --

THE COURT: Because frankly I'm not into a mind to make a he said/she said type of determination on the FTI issue today.

MR. EISENBAND: I would just like, Your Honor, that you can help on just one issue and that is while the fee examiner talks about that he understands that FTI will be really -- the issue will be dealt at the end, he still objects and requests a disallowance on a monthly basis that makes us spend time responding to it, even though he basically said he -- and he says in the objection that he understands that it probably will be overruled.

I would ask that he stops with these types of objections until the final fee hearing. Thank you.

THE COURT: All right. Here's what we're going to do, folks. I've historically prided myself on being properly prepared for arguments and the decisions by Judge Bernstein are of enough materiality that I think it would be contrary to my historic practice and unfair for you for me to rule on the fees on fees issues without deciding that.

And while I have a pretty strong tentative in my mind as to how I should deal with the notice of the changes in fees, if this is a matter that is already before Judge Peck, I think, given my historic desire to be consistent with my colleagues I should resist the temptation to rule based on my tentative, in the absence of having issued a more premeditated decision in

that regard.

Some of these matters also raise issues as to whether, if they are to be implemented, I'm thinking particularly of the notice issue, as well or better handled by way of an amendment to court rules and/or guidelines rather than in a one-off ruling in a particular case.

For these reasons, the fees are approved to the extent that they either were not objected to by the fee examiner or the U.S. trustee's office or were resolved in a manner or manners satisfactory to those parties. And if and to the extent they weren't paid, they're now authorized to be paid. However, to the extent, albeit only the extent, to which they involve either of these two issues, they're to be carved out of the remainder of the application and I will arrange for an on-the-record conference call in which I will dictate a ruling on that.

I've got to caution you, folks, that I'm juggling a lot of balls in this case and the other cases on my watch. And on this issue it could be several weeks or, potentially, worse before I can issue that part. But, folks, I'm like the Dutch kid with his finger in the dyke; I just have to deal with the most pressing issues on my watch and the fees on fees issue and the notice issue, in the world of the triaging that I have to do, just can't be put at the top of the pile.

Also, to tell you the truth, I have less interest in

deciding policy matters and issuing precedent for other cases than I do with meeting the responsibilities that are on me in any given case. So that's the way we're going to do it.

Mr. Masumoto?

MR. MASUMOTO: Your Honor, just for the record, we did ask for a ten percent holdback. I think there is no objection to that, I just wanted to allow the parties to confirm that.

THE COURT: Is there anybody who has a problem with what Mr. Masumoto just said? Hearing no response, that'll be the way it is.

We'll now take a ten minute recess. Everybody who's here on anything other than the New GM dealers matters is free to leave. And after the break I'll take that. Mr. Williamson, oh, you had that scheduling matter you wanted to address.

MR. WILLIAMSON: Yes, just two and very quickly, Your Honor. With respect to the Court's ruling from the bench, debtors' counsel and the fee examiner do have a few trees to work through but I'm hopeful we will do that without any difficulty. And if we have difficulty we'll consider it under the umbrella of what the Court said.

THE COURT: Would it work for you and the counsel to say that if you can work out a deal you can implement it without further order from me and if you have to agree to disagree you should tee it up for some kind of determination?

MR. WILLIAMSON: Correct.

THE COURT: Okay.

MR. WILLIAMSON: No difficulty. Your Honor, today is October 26th. We are now current on all pending fee applications. The next round of fee applications covers the period from June to the end of September. They are due on November 15th in terms of filing under the local rules.

The end of the year sometimes matters to law firms and consulting firms; we're not unaware of that. And we're prepared to at least make a significant effort to process the next round of fee applications, Your Honor, if it is within the Court's ability to schedule a hearing in the second half of December so that the end of the year would at least provide an opportunity for the professionals to become current for their own purposes.

THE COURT: Well, having been a lawyer, as some people noted, I'm sensitive to that but I am less clear on how much of an issue that is nowadays when we have interim fee orders. To what extent does the ratification on a quarterly basis affect that? And maybe you're the wrong guy to be asking that, Mr. Williamson. Maybe I need some help from Mr. Smolinsky and Mr. Schmidt and Mr. Reinsel on it, and for that matter your special counsel colleagues.

But I would have thought that the lawyers are going to get pretty much what they're entitled to whether or not I

hold an interim fee app hearing in the last few weeks of December. Would you be willing to yield to give them a chance to be heard on that exact issue, Mr. Williamson?

MR. WILLIAMSON: I've concluded, Your Honor, and I thank the Court for noting that some of us aren't on the eighty/twenty program.

THE COURT: Wait. I lost you on that.

MR. WILLIAMSON: Well, some of the professionals, Your Honor, aren't --

THE COURT: Oh. Like you, yourself?

MR. WILLIAMSON: Yes.

THE COURT: Fair enough. I certainly understand that concern. So let me understand, first, if this is mainly an issue for those who aren't on the eighty/twenty program. Mr. Smolinsky?

MR. SMOLINSKY: Your Honor, Joe Smolinsky for the debtors. We are on the eighty/twenty program. I think the difference for us is maybe the ten percent on fees.

THE COURT: So you have the issue, too?

MR. SMOLINSKY: We have the issue. I don't know if it's enough to upset your whole schedule but I guess we are sensitive to the fee examiner's issue not being on that program.

THE COURT: Can you guys get your ducks in a row a week or two before Christmas day?

MR. SMOLINSKY: Why don't we work together on scheduling and see if we can come up with --

THE COURT: I have enough memory of what it used to be like to be a lawyer to be sensitive to your concerns, folks, especially if it's consensual getting you something a little before Christmas would be something I would try very hard to do if I can. And I assume that it's of enough importance to you that you'd be willing to do it, like, at 8:30 in the morning or at 6 o'clock at night, if need be. So Mr. Smolinsky, you put your noodle together with Mr. Williamson and anybody else who has to do deal with this and to tell you the truth, if I can get some rest between Christmas and New Year's I'm going to try. But if I can do something for you in the way of giving you court time in the week or so before Christmas, I'll try very hard to do that.

MR. SMOLINSKY: Maybe for Christmas we can give you an uncontested fee hearing.

THE COURT: I need more than that from you guys for Christmas but it's a step in the right direction. Okay. Fair enough. All right, we'll take a ten minute recess then we'll start, without any more than that, in the way of New GM and the dealers. Anybody who is here just on what we've had so far is free to leave. We're in recess.

(Recess from 11:50 a.m. until 1:12 p.m.)

THE CLERK: All rise.

THE COURT: Have seats, please. All right. Motors Liquidation, New GM and the dealers. I want to get appearances from everybody and then I have observations. So let me get the appearances, then sit down and I'll tell you what you need to address.

MR. STEINBERG: Arthur Steinberg and Scott Davidson from King & Spalding on behalf of New General Motors.

THE COURT: All right.

MR. COOPER: Good afternoon, Judge. Jeffrey Cooper from Carella Byrne and Mark R. Beebe -- I'm sorry. I apologize, Judge -- Adams and Reese from New Orleans, Louisiana. Mr. Beebe has been admitted pro hac vice by Your Honor's order for Leson Chevrolet.

THE COURT: Okay, Mr. Beebe.

MR. BEEBE: Thank you, Your Honor.

MR. BLATT: Good afternoon, Your Honor. Steven Blatt from Bellavia Gentile on behalf of Rose Chevrolet, Halleen Chevrolet and Andy Chevrolet.

THE COURT: All right, gentlemen. Here's what we're going to do. First, on the Ohio car dealers, it appears to be acknowledged that the Ohio car dealers' situation is, I think the words that were used, virtually identical to those in the matter upon which I ruled for Rally. So I want both sides to address the extent and/or manner to which I should deal with the matter that at least seemingly must be decided before the

31st of October, while simultaneously providing appropriate opportunity to take into account any views that Judge Patterson might express on the Rally appeal, which at least seemingly would not be binding on this issue but at the same time be beneficial. But on the Ohio dealers' issue, Mr. Blatt, I got to tell you that I see no basis for distinguishing the Ohio dealers' circumstances from those I addressed. Please have a seat.

MR. BLATT: Oh, I'm sorry.

THE COURT: The more difficult challenge for me, gentlemen and what I need both sides to address, is the Leson Chevrolet matter.

Now I gather that it's considered perfectly okay, in some places, perhaps a lot of places, to be going into your local tribunal to get an ex parte order, although I think it's much less okay when you're trying to do that in the face of both contractual provisions and court orders that say that this court has exclusive jurisdiction of it.

But to the extent that the Leson Chevrolet involve going to one's hometown tribunal to get out of my jurisdiction and order, and I will speak softly and I will control the outrage by which I view such measures, they're legally indistinguishable from those in the Ohio dealers situation, unless you, Mr. Beebe or your co-counsel, can explain to me something to which I'm unaware, given the extensive analysis

and thought that I gave to these issues before.

The more difficult issue, gentlemen, is what I should do about the fact that Leson Chevrolet won an arbitration and this is not a down-home court and this court looks at matters objectively. And on the merits, I have trouble with both of your positions but especially New GM's.

Now here, we do not have a situation where the dealer has lost an arbitration and wants a second bite at the apple and is looking for some kind of a do over somewhere else and instead it is trying to enforce the arbitrator's ruling. Now in my earlier decision, I distinguished situations to enforce the ruling from those to get out of it.

Now what I need both sides to address is a number of issues in that vein, because just as I believe that parties should live with the results of the arbitration when they lose, I'm of the view that the converse is also true. And just -- or, putting it differently, just as I believe that the dealers have to live with the consequences of the arbitration when they lose, I think New GM has to do likewise.

Now, in that connection, under the law of New York, in which I was trained, and I suspect but don't know that it's true under the law of Michigan which was the law whose -- the law the parties said would apply in connection with the termination agreements, one can't rely on the failure of a condition that ones own conduct has occasioned. GM has a

problem in this regard because by having started a termination process and deprived Leson of vehicles which, if they had been provided might have given it more liquidity and/or more ability to get financing, that put Leson in a catch 22 situation where it was reinstated but may have lacked either the working capital or the ability to get financing that were elements of its ability to continue as an operating concern. Frankly, I don't know how far that analysis takes on and, for that reason, I want both sides to address it. But it's a matter that troubles me, gentlemen.

I also notice the seeming disconnect between what 747 says that the winning dealer gets and what GM offered it. Now Leson cites in its brief the language of 747 and I assume nobody is quarreling with the accuracy of its quotation which says that the New GM has to provide the dealer, if it wins, if the dealer wins, a customary and usual letter of intent to enter into a sales and service agreement. And I have questions in my mind as to whether GM did that.

I also have heard, but am not impressed by the argument, that by giving the dealer X days, and although there was a reference to two days, I think, it may be that the more accurate number is ten, but even ten, on a take-it-or-leave-it basis, I have issues in my mind as to whether, (a)any assent to that should be regarded as being under duress; and (b)whether GM had the right to make such a demand.

I also have questions in my mind as to the extent to which there should be res judicata or collateral estoppel with respect to the arbitrator's findings on Leson's ability to perform. And I also am sensitive to Leson's desire to get discovery on the issue of whether it did in fact get what is customary and usual.

So, as you can tell from these preliminary remarks, gentlemen, I'm pretty annoyed at both sides. And until I can get my arms around these issues I have a strong disinclination to allow GM to pull the plug on Leson, notwithstanding how offended I am about the way Leson behaved, and it appears to me, subject to people's rights to be heard, that if Leson could bring itself into compliance within a reasonable period of time or satisfy me that it's capable of meeting what the statute requires it to meet, as compared and contrasted to what GM demands that it should meet, that I, as a neutral court, should be a little slow to deny it the benefits of the arbitration award that it won.

I'll hear first from the New GM side. Actually, I want to rephrase that. I'll hear first from the Ohio dealers because I don't, frankly, think there's much to talk about for the Ohio dealers other than how, if at all, I should leave things to be adjusted by reason of any change in precedent but nothing binding on me. I think I want to talk about the Ohio dealers, get that behind us and then talk about the more

difficult issues involving Leson.

So, Mr. Blatt?

MR. BLATT: Thank you, Your Honor. Steven Blatt, Bellavia Gentile for the Ohio dealers. Your Honor, I believe in accord with both the letter that I sent and Mr. Jeff Jones sent yesterday to the Court, trying to resolve the motion, I believe we've done that in the hall prior to taking the bench.

With your permission, we propose that -- you know, both sides acknowledge that the issues, the legal issues with respect to this Court's jurisdiction litigated in Rally are, I believe, virtually identical, as I acknowledged in my letter yesterday. As a result, we propose to submit a proposed order, a joint order, granting the motion on the same terms as the Rally motion. However, both sides would be subject to the stay that Judge Patterson has enacted in the Rally Rule 8005 motion that we filed with him and that, to put it as simply as I can, the Ohio dealers will agree to rise and fall with Rally on its Rule 8005 motion and its appeal. We'll agree not to go to any other court with respect to the order that you'll enter, that we'll submit with respect to this GM motion returnable today. And whatever Judge Patterson decides with respect to that motion and whether or not we go forward with the appeal, we'll abide by that.

THE COURT: On the GM side, Mr. Steinberg, did he accurately describe the deal?

MR. STEINBERG: Yes. But I probably have a few more words. So if Your Honor would indulge me I'd like to be able to add what I think we had agreed to but would be a little more expansive.

THE COURT: Pull the mic closer to you, please.

MR. STEINBERG: If I could --

THE COURT: That's probably best, so, yes, do that.

MR. STEINBERG: It was agreed that if any appeal of the Ohio dealer's order would be treated as a related matter so that it would go before Judge Patterson as well, so we wouldn't have two district courts hearing, essentially, the same kind of case. We would be presenting to Your Honor the language that Judge Patterson included in his order to show cause, which basically froze the situation until he actually ruled on the Rule 8005 motion. So there as, in effect, a TRO and we would copy that language there and it was agreed that, as Rally goes on the stay issue, so will the Ohio dealers consensual stay. And that they will not, if Judge Patterson denies the stay, they will not run to another district court in the southern district trying to get stay relief from another judge. And that, as he said, that there would be -- the exclusive jurisdiction of this Court will be recognized, they won't go to any other courts but it'll be without prejudice for them pursuing their appellant rights, either in the district court or for an appeal of the district -- the southern district of

New York.

And that the stay, and to the extent that the Rally order had the requirement to dismiss the Ohio litigation, it'll not run off the date of Your Honor's order but will run off the date of termination of the stay by Judge Patterson and it'll be something like three business days to terminate, with prejudice, the litigation and two days thereafter to file evidence of the termination with the Court.

So we're going to try to stay as close as we can to the agreed upon Rally order, which Mr. Blatt was also involved with, but would encompass those terms. And I think that that -- that satisfies the Ohio dealers and as a practical matter, it satisfies New GM because we believe that this is related to Judge Patterson. Judge Patterson already entered this kind of TRO stay. So, as a practical matter, if they appeal and then went in front of Judge Patterson he would do the same thing until he ruled.

We also think this is relatively -- a very short term measure because at the oral argument Judge Patterson indicated that he would try very hard to make his decision before October 31st, which is Sunday. So we assume that the status quo will remain in place.

We felt strongly, though, about having this hearing and this order because, as Your Honor will note, that after we filed our motion before Your Honor, they went into the Ohio

court and in effect they asked to change the equation and the Ohio judge there refused to grant a temporary restraining order. We didn't want any kind of repeat of that again.

THE COURT: Mr. Blatt, except for the last sentence or two that Mr. Steinberg said, which I assume was his view of the world as contrasted to describing the deal you made with him, did he accurately describe the deal?

MR. BLATT: Yes, Your Honor.

THE COURT: Okay. Gentlemen, I regard that approach as very sensible and actually superior to the tentative that I had articulated in my endorsed order. So I'm going to approve it. Can I get your respective recommendations as to whether you're merely having stated it on the record and me having just stated that I approve it is sufficient or does it need to be papered in any further way, either for the record here or to help Judge Patterson?

MR. STEINBERG: I think --

THE COURT: You can use that mic if you just pull it close to your mouth.

MR. STEINBERG: I think Mr. Blatt would prefer to submit an order. So we will endeavor to do the first draft, get something to Mr. Blatt this afternoon and hopefully be able to present something to Your Honor.

THE COURT: Which order, I take it, will be consistent with what I just heard on the record.

MR. STEINBERG: That's correct, Your Honor.

MR. BLATT: Yes, Your Honor.

THE COURT: Sure. Okay. That takes care of that.

MR. BLATT: Your Honor, if I may take my leave?

THE COURT: Yes, sure. I'm sorry?

MR. BLATT: If I may take my leave?

THE COURT: Yeah. What I was about to say is if you don't feel like you need to hear Leson, you're free to leave, if you choose to.

MR. BLATT: Thank you for your consideration, Your Honor.

THE COURT: Okay. All right. Now, on Leson, I think I still should be hearing from you first, Mr. Steinberg.

MR. STEINBERG: That's fine.

THE COURT: Then we'll have the usual back and forth.

MR. STEINBERG: Your Honor, I plan on addressing your remarks. There was the threshold question, which I think Your Honor alluded to but I wasn't sure of the phrase in the question as to your exclusive jurisdiction and whether you needed to hear argument on the jurisdictional point or whether you wanted me to go directly to the questions that you had where you expressed some displeasure with New GM.

THE COURT: Do you know, from your dialogue with Leson, whether Leson is really challenging my exclusive jurisdiction? If it is, I think you better address it but I've

got to tell you, Mr. Beebe, I don't regard this as any closer for you then it is for the Ohio dealers.

MR. BEEBE: Your Honor, I would like to present a short brief argument on that issue but I do hear what you're saying and I do appreciate the Court's position on that. I think it's just slightly different based on two factors, primarily --

THE COURT: Well, fair enough. And I'll give you that opportunity but with that preview, Mr. Steinberg, make -- you know what, since you're presumably going to be responding to somewhat different points than Mr. Beebe's going to make on behalf of Leson, as contrasted to what the other dealers did, why don't we flip flop the order and let Mr. Beebe be heard first on everything and then you can respond. I'll let him reply and I'll let you surreply.

MR. STEINBERG: Your Honor, I think that it makes perfect sense to hear his remarks on exclusive jurisdiction and then Your Honor can see whether you needed any further argument from the arguments that I had made in Rally. But I did have specific answers to a lot of the questions that were troubling with -- troubling you about what you perceived to be the heavy-handedness of New GM and I think I probably could advance the ball in the dialogue.

Having said that, I'm prepared to do it any which way you want.

THE COURT: Well, if you think you can advance the dialogue then let's bifurcate it. Mr. Beebe, I'll hear your points on exclusive jurisdiction, give Mr. Steinberg a chance to respond, you to reply and him to surreply on jurisdiction. And then we'll flip flop the order in the event, as I've got to tell you is likely, that I still see myself as having the jurisdiction.

MR. BEEBE: Thank you, Your Honor, and it is a privilege and honor to appear before you and I thank you for signing the order for me to appear pro hac.

Judge, I want to address one issue, before I get into the jurisdictional issue, just so the record is clear. I heard the Court's admonishment regarding what was perceived to be Leson's ex parte attempts to secure jurisdiction outside of this court. But I think factually --

THE COURT: It wasn't just securing jurisdiction, didn't you get a cease and desist order out of the Louisiana agency?

MR. BEEBE: The LMVC, that's correct Your Honor. Actually co-counsel with another firm but I'm not disregarding that obviously here on behalf of Leson, our client.

The reason, though, Your Honor was that we were coming upon an impeding deadline and GM was going to terminate or potentially terminate the LOI or the wind down or the amended wind down and we had no idea, because this was in

September. Realize, we filed that on September 13th, long before the October 4th Rally hearing before Your Honor. We had no idea that this Court felt so strongly about exercising exclusive jurisdiction.

Even in the Rally hearing Your Honor entertained quite a considerable amount of argument about the AAA rules applying, about Rule 48(c) and the enforcement of some arbitration judgment or order being conducted in some other tribunal, besides this court. And you even acknowledged in that Rally hearing, Your Honor, that that may be a consideration, that you could go someplace else and maybe go to state court or federal court but we don't have that situation here, is what you said.

We're in that situation where Leson has won. We filed in September just to say wait, let's maintain the status quo, let's not lose our dealership. And I think it was wise, on our part, to get some relief. Had we known that the Court wanted to exercise jurisdiction, we certainly would have come here. Although in our minds it would have been a leap for Leson because it would have been inconsistent with 747, at least from where we're coming from, from the standpoint Congress carves out jurisdiction from this Court and says, look, you dealers who have been terminated, we're going to give you an opportunity to go ahead and prove your case to an arbitrator but you're going to do it in your home state. So it

makes little sense, at least in our minds, that we would come here if Congress, in its infinite wisdom decides you, Leson, terminated dealer, go and prove your case and we win, then you would go and enforce your judgment in a state or federal court under 48(c) of the AAA rules.

But in Louisiana, the LMVC regulates all the relationships between a manufacturer and a dealer. So it's logical that's where we would go to seek relief and say we want to be reinstated, can't we just be reinstated and proceed because we won back in July and we still don't have new inventory, we still can't sell cars. And as you pointed out, Your Honor, in one of the questions that you posed to New GM and their "heavy-handedness", it's killing us.

And so I just want the record to be clear and the judge to understand that we didn't feel like we were doing anything wrong or attempting to circumvent the jurisdiction of this Court. And the timing and the facts certainly indicate that we weren't doing that. And in fact we didn't hear about -- they removed, meaning GM removed to the Eastern District of Louisiana. That court sua sponte dismissed the remand -- dismissed the removal. And so it went back to the LMVC, they ex parted, asked for a stay of that remand order and so we had a teleconference with the Judge, with both GM counsel and myself participating. And the Judge rescinded his stay order and that's why the LMVC said, well, we'll proceed as we

normally would proceed because it's more than a month old at this point in time.

So again, my apologies to Your Honor. Had we thought this was -- the Court wanted to exercise exclusive jurisdiction over this matter we would have certainly come here. But there was no reason why we would think that, based on the facts, as we knew them on September 13th when we filed before the LMVC.

Now let me go into the jurisdiction issue. Your Honor, you've been more than patient with me. We think there's two factors that the Court needs to look at and one, in fact, is your 363 order. Under that particular sale where you created a regime where you had two types of dealers, you had participating dealers and those are the ones that had the relationship with New GM going forward and then third termination dealers which we happen to fall into. And if you read Your Honor's order, at paragraph 32, this talks about participation agreements. And at the end it says, "Any disputes that may arise under the participation agreements shall be adjudicated on a case by case basis in an appropriate forum other than this court."

In paragraph 32, you chose to say new dealers, you're not coming back here. And in preparation for this argument I called the Louisiana AG; because I understood they participated in these early on discussions and they said yes there were discussions regarding what would happen to these new dealers.

Would they have to continue to come back before Judge Gerber to resolve all disputes regarding their new participation agreements and their relationship going forward? And they said no, that was something that was very important to the AGs and in fact I spoke to National -- Counsel for the National Association of Attorneys General who also confirmed that was a negotiated term and discussed regarding those participating dealers.

And, secondly, if you look at paragraph 71 of the 363 order, it says, "This Court does not retain jurisdiction to hear disputes arising in connection with the application of the participation agreements." You, Your Honor, specifically carved out jurisdiction for participating dealers. So under your regime, there were two, as I said. There's participating agreements and deferred termination dealers.

Originally, we fell into deferred termination dealer. But 747 comes along almost five/six months after this order's issued. It's a carve-out. It says "Please proceed to arbitration, prove that you were wrongfully terminated." We did it with flying colors, Your Honor. As you can see from the arbitrator's decision, it was clear that we were a very successful dealership. We had put in twenty-five million dollars of profit in GM's pocket for three years before we were -- before we received the wind-down in 2008.

And there's several other factors. We were one of

the dealers in Louisiana. We have 2.5 times the capital because of our property than the average dealer in our region, which includes a thousand dealers. All of these facts were heard by the arbitrator and decided in our favor.

But, more importantly, once we win arbitration under 747 we presume that we're not a deferred termination dealer, but we're more akin to a participating dealer. The ones that you said, that, Your Honor, under 363 we don't want to exercise jurisdiction over. You have a dispute with New GM go through the state route. Go through whatever remedies you have, either under state or federal court.

So the one -- the one exception, at least under your own order, 363, would say that the Leson is more like a participating dealer than it would be a -- a dealer that lost arbitration. So that's the first limitation to this Honorable Court's jurisdiction. And in spite -- ironically, it seems that GM is violating the 363 order by bringing Leson here.

The second issue, 747, Your Honor. It's a carve-out. Congress said we're going to limit the bankruptcy court's jurisdiction for the purposes of those deferred termination dealers. And there's no question that we fell into that --

THE COURT: Where does 747 say anything about the bankruptcy court's jurisdiction?

MR. BEEBE: Your Honor, I don't think it specifically addresses it. And I know that in the Rally hearing you wanted

to harmonize those. And what I'm trying to understand is how to do that jurisdictionally. But here's how what the conclusions we come down to, Your Honor.

If you look at 747 -- just give me a moment.

(Pause)

You'll see in paragraph E it talks about what happens in the arbitration. The first thing in that paragraph E of 747 it says that you'll go to the Triple A. It says that "The arbitrator shall be selected from a list of qualified arbitrators and it will proceed under the Triple A." It follows and continues. It says "The arbitration shall be conducted in the state where the covered dealership is located." Why did it do that? Why did Congress choose to give that up. It could have said, you know, Judge Gerber, we know you're busy but we're going to ask that you administer --

THE COURT: Forgive me, Mr. Beebe. In my court we start any statutory analysis with textual analysis. And we talk about what the statute says, not what people read into the statute.

So tell me in response to the question that I asked, but you did not answer --

MR. BEEBE: Your Honor --

THE COURT: -- what 747 says that addresses the matter of the jurisdiction of the bankruptcy Court?

MR. BEEBE: And that's a fair question, Your Honor.

It does not specifically address the bankruptcy court's jurisdiction. And, so, it is subject to Your Honor's interpretation in saying that look, I've got to harmonize these.

The one thing I would point to is paragraph G that says "Notwithstanding the requirements of this provision nothing in here shall prevent a covered manufacturer from lawfully terminating a covered dealership in accordance with the applicable state law."

I would argue that the Court also -- Congress also carved out a particular situation where you could -- GM could go and exercise its rights under state law. If that was intended why -- how could that happen if, in fact, this Court had exclusive jurisdiction.

There is -- you have to give meaning to paragraph G, in pari materia, if you give that statutory interpretation and give G meaning, you couldn't have that carve-out, GM couldn't go to state court if that were the case, at least the way I would read it in statutory interpretation.

And as a consequence, it seems to be a reasonable interpretation to take the other paragraphs of 747 and interpret that there was some limitation. Because otherwise paragraph G is meaningless. It has absolutely no meaning because GM can't go and terminate them under state law, they've got to come here. And that's not what paragraph G of 747 says,

Your Honor.

So it's a consequence the combination of the 363 limitations, your court's own limitation, Your Honor, about dealing with participating dealers, and then 747 which has a carve-out. And it's under paragraph G, it's clear Congress gave at least GM some other alternative. If that wasn't intended, then why is it in that particular statutory scheme.

So those two particular provisions at least are on line with 363 order, on its face, as well as 747 would allow us to go to our home state, where the arbitration took place, and seek enforcement of our reinforcement rights -- reinstatement rights, I'm sorry.

That's really what we're asking. And it seems to be consistent with Congressional intent when they say let's do it expeditiously and lets do it cost-effectively versus having to come to New York to seek reinstatement. That seems to be consistent with the spirit of that statute.

And I can't -- again, it may have been oversight, it was a long -- a long law, frankly, and this was tagged at the end of that particular law that was passed. But it's clear under paragraph G there was a -- some limitation to this Court's jurisdiction because otherwise it becomes meaningless without giving G some effect.

Your Honor, I'm happy to answer any questions you may have regarding the jurisdictional issue, but that's the sum and

substance of my argument.

THE COURT: Fair enough. Mr. Steinberg.

MR. STEINBERG: The Rally motion was filed on September 10th. Their request for a hearing in the cease and desist came after that on September 14th in Louisiana.

This past week there's been a hearing scheduled for the end of this week in connection and before the Louisiana Motor Vehicle Commission.

I think, but counsel can confirm this, because I don't know this for a fact, I think they did something to try to provoke that kind of hearing after Your Honor ruled on Rally and after the motion was filed.

I do think that there's a simple answer to the jurisdiction question, though, because I think counsel said if he knew that the Court wanted to exercise jurisdiction he would have come here. So I think it -- notwithstanding all of the argument, he basically said if I thought there was exclusive jurisdiction here and I knew the Court felt this strongly I apologize, but I would have come here. So now we're here. So I think he's consented to the Court's exclusive jurisdiction.

On his surreply he could say whatever he wants to say in response to try to clarify it, but I think that's what he said.

The definition of participation agreement is in Section 6.7 of the master sale and purchase agreement. They

are not someone who signed a participation agreement. That provision in the sale order which talked about the different type of relief that someone who has a participation agreement would have, is not them.

So you can listen to them closely, Mr. Beebe said it's akin, which is his concession that it wasn't -- it wasn't an actual participation agreement.

And in 6.7(b) it says "Participation agreements and the related continuing brand dealer agreements will be auto -- will automatically be assumable executory contracts hereunder." So the notion is is that Old GM had assumed these agreements, had assigned them to New GM and now they were an assumed contract by the purchaser. And people in the context of dealing with the AG in the order, carved out something special for participation agreements.

But on the flip side it clearly didn't have the same type of thing for people covered by the wind-down agreements, which is what Leson had, which is what Leson signed.

So they are not a participation, they didn't have the right. They started their request before the Louisiana Motor Vehicle Commission. But after the Rally motion was started, they -- I think that they precipitated action before the Louisiana Motor Vehicle Commission within the last days -- last ten days to have a hearing. And the provision in Section 747, which they referred to, didn't say you pursue under -- in the

state courts, it just says pursue under state law if you wanted to terminate somebody. And I think that's a different -- that's not the same thing as saying that statute is saying you should pursue your remedies in state court.

But the bottom line is that if he said I made a mistake, I didn't realize it, we're prepared to accept him at his word, and then he's consented to the jurisdiction of this Court. And Your Honor has said that you have particular concerns of New General Motor's conduct, and I'm prepared to try to address those concerns.

THE COURT: Well, before you do, I think I need to rule on the jurisdictional issue.

MR. BEEBE: Your Honor, if I may just have --

THE COURT: Yes, I'll permit you to do that.

MR. BEEBE: One reply regarding --

THE COURT: Okay.

MR. BEEBE: -- co-counsel's -- other counsel's comments.

Your Honor, clearly we didn't know about the Rally here, and we're not monitoring the GM bankruptcy. GM can't come here before you and say they served Leson with the Rally pleadings, that's absurd. And that's --

THE COURT: Have a seat, please, Mr. Steinberg.

MR. BEEBE: That's the misimplication that Mr. Steinberg has just led this Court to believe.

We had no idea about Rally. But so it's clear, Your Honor, we do believe that this Court can share jurisdiction, it's not -- it shouldn't be exclusive just because of the two factors we cited. And I've been over that and I won't reiterate that argument.

Just from the fact -- the standpoint of -- again, there's been two limitations and it would not offend the notions of this Court's jurisdiction to have that particular non-exclusive jurisdiction over the Leson matter.

Thank you, Your Honor.

THE COURT: All right. Gentlemen, stay in place for a second.

(Pause)

THE COURT: All right. Gentlemen, I'm ruling that just as I had exclusive jurisdiction in the Rally in the Ohio dealership matters, where the dealers lost in the arbitration process, I have that same exclusive jurisdiction where the dealer won in the arbitration process.

I don't need to rehash. I think everybody agrees on what the sale agreement and the 363 order provided. And, therefore, the only remaining issue appears to be whether if somebody wins in the arbitration process, and, therefore, is entitled to avail itself over or of what 747 provides that rewrites history. And without a doubt it gives the winning dealership rights, which I discussed in my preliminary

observations, and which we'll discuss further. But it doesn't unwind history.

Leson, like the Ohio dealers, like Rally, like countless other dealers that lost in the arbitration process, was subject to a deferred termination agreement with respect to which Congress gave dealers the arbitration mechanism to change that conclusion.

As I ruled on page 47 of the Rally transcript in the slightly different context, and, of course, talking about a different dealer, "Here and to the extent Rally was successful in the arbitration, of course, that would be a defense to" -- and there's a transcription error, "to any effort to make it terminate its agreement."

But the fact is that what Leson won in the arbitration was what 747 gives it. It didn't make the termination agreement disappear. And until and unless the new agreement comes into place Leson lives under the provisions of the termination agreement, subject, of course, to its rights to come in here, to cause me to conclude, as I may ultimately conclude, that I need to implement the arbitrator's ruling.

Now, it is not a satisfactory explanation to say that now we're no longer under the termination agreement that we signed, but that we entered into or should be deemed to enter into it, because it's undisputed that they didn't, a new agreement that one could, in any way, shape or form regard as a

participation agreement.

Mr. Steinberg, on behalf of New GM, said that Leson's contention was that the new agreement, or that the rights it had, were akin to a participation agreement. I don't think he quoted it exactly correct because I took it in my notes. What Mr. Beebe actually said was two things, which I wrote in my notes. We presume. And he said it's more like a participating dealer.

We can and will talk about whether it is appropriate to implement the arbitrator's ruling. But whatever the arbitrator did rule it cannot in any way, shape or form be read as saying that Leson didn't really enter into a deferred termination agreement back in 2009. And it was and continues to be acting under a different statutory regime.

So observers may no doubt notice the parallelism or congruity in what I'm ruling. I have exclusive jurisdiction whether you win or lose. So that's what we're going to talk about next.

This ruling will be implemented in connection with any final order, or interlocutory order that gets entered in connection with this controversy. But, gentlemen, that matter is now decided for the purpose of going forward. Although, your rights to appeal or seek leave to appeal that interlocutory order will run from the time of its entry and not from the timing that I'm saying it now.

All right, Mr. Steinberg, now let's address the merits, which I regard as much more significant and debatable.

MR. STEINBERG: Thank you, Your Honor. I think Your Honor put your finger on a number of issues that were troubling you. And I think they were -- that you were right to be troubled by them. Because when I reviewed the file, as well, I wanted to be able to have answers for Your Honor with respect to these types of questions.

They are, other than the fees, dealer, which is the Iowa court decision, which you have, they are the only one we are in litigation with, where they actually won in arbitration, but they haven't been formally reinstated.

I'm sure Mr. Beebe will argue that will be a sign of New General Motors recalcitrant's, and I would say the opposite, which is that if we can get along with everybody else and figure out how to institute an ordinary and customary letter of intent with everyone else other than Leson, that perhaps the problem is with Leson not with New General Motors. I don't think that advances really the argument very far, I just wanted to be able to point out that this is a unique circumstance. And New General Motors has been struggling with how to try to get a satisfactory resolution of this matter.

Now, I think that there were two competing concerns here, and they're legitimate concerns from Leson and legitimate concerns from New General Motors.

In an ordinary and customary letter of intent there needs to be something that addresses the net working capital requirement, and there needs to be something that addresses a floor dealer financing -- floor planning financing. That's the requirements that they put in all of their dealerships, and it was in the dealership that Leson had signed before the bankruptcy and was included in the LOI.

The issue is is what should those numbers be? When New GM sent the proposed LOI it used the same working capital requirement that was in the original Leson dealership agreement, and had been the same between 2003 and 2008.

The purpose of the net working capital agreement, and if Your Honor has an evidentiary hearing on this, we will actually have to present testimony on this, but my understanding talking to my colleagues, some of whom are on the phone here, is that you need to be able to demonstrate to New General Motors that you have the capability of performing your projected business plan, not your past performance over the last twelve months, but your projected business plan.

The number that was included in the letter of intent, which was the same number that was in the prior dealership agreement, essentially gave Leson four months to get up to that net working capital agreement. That proposal was given to Leson -- the LOI was given in June and was signed by Leson on July 1, and required that by October 31 it would have to get

back to the same threshold, it would have had three/four months to try to be able to do that.

The issue about financing was that they had to get financing within a sixty-day period of time. If you read the arbitrator's decision you'll see there's a reference that they told the arbitrator that they either had or could get it. And so that was -- and they had a commitment letter from local banks. So it was assumed that they would be able to try to accomplish something within the sixty days.

Sixty days goes by, New GM still has not been sued, but they say they're having problems with the dates. So New GM pushes --

THE COURT: Problems with the what?

MR. STEINBERG: Meeting the dates, meeting the deadlines.

New GM pushes the deadlines to give them more opportunity to try to comply with the deadlines. To try to get the floor -- the dealer floor financing and to try to get the ability to get 2.85 million dollars of net working capital, which is a formula that has -- is based on your current assets and has some additions and some subtractions. I think one of the exhibits to the Leson objection does have some of the materials on that. Not the complete materials but some of the materials.

So we had given Leson the opportunity and they still

had the opportunity as of October 31.

When we gave the extension in September we hadn't been sued. And then after giving the further extension we did get sued. And I think the real dynamic here is as follows, Your Honor. And I did try to approach this sort of in a practical basis, because we could litigate, you know, as to whether there was duress here or not. Because if there was no duress then they voluntarily signed a letter of intent with certain requirements which they haven't been able to meet, which should lead to the termination.

THE COURT: Why don't you assume for the purpose of this discussion there's at least an issue of fact as to whether there was duress in 2010.

MR. STEINBERG: Right. We would have to -- we would have to have that as a special trial. But if we were successful at that trial that would be the end of the issue.

But we tried to approach this on practical basis. And I don't think it violates privileged communication for me to tell you what our last settlement proposal was. I won't say anything about what they did other than that this proposal was out there, and was made last Friday. And I think it does illustrate to Your Honor what we're trying to do to try to address this on a practical basis.

But if we can't address it on a practical basis we will have an evidentiary hearing and address it on the merits.

We had made this proposal to a principal of Leson. "That the parties will agree that the wind-down agreements and the letter of intent would be extended, along with the present dealer sale and servicing agreement, to the dates contemplated in the settlement outlined below. We'll be sending you a letter as soon as the parties have executed the settlement agreement advising that the dealer agreement had been extended pursuant to this resolution.

Item one, by January 31, 2011, Leson Chevrolet will have 2.137 million level of net working capital. That's seventy-five percent of the 2.85 million," which is in the letter of intent.

"As soon as possible, but in no event later than" -- I'm sorry. "As soon as possible, but in no event later than January 31, 2011, Leson will have acceptable floor planning in place as contemplated by the LOI." So we were giving them another four months to get their floor planning in place and lowering the net working capital requirement.

"Leson will be required to reach the 2.85 million dollar level by January 31, 2012. Leson will provide GM with building plans acceptable to GM for it's showroom and facilities by June 30, 2011. They'll have all their permits and needed actions completed to start construction by January 31, 2012, and will commence the facility construction on that date, with a completion date by December 31, 2012.

If Leson fails to meet these requirements or dates, then the dealer servicing agreement will terminate at that point in time, together with the wind-down agreement, and provides it complies with its terms Leson will resume the wind-down payment that's in paragraph 6.

And then the parties will sign a stipulation to reflect that."

The purpose of that proposal was to try to meet, to some extent, Leson's argument that the reason why it has a problem ramping up to the working capital that it had in 2008 was because they were suffering under the wind-down agreement.

So if you go back to when the arbitration award was ended in June we would have, essentially, given them seven months to try and ramp up to seventy -- a level of seventy-five percent of that, which we think was more than generous and certainly within the ordinary and customary language of what we'd done, with both the people that got reinstated through arbitration and through the people who we settled. And we're prepared to try that matter.

The only thing that we want is that whatever the numbers shift out, whatever they turn out to be, if they can't meet then it has to be an end. We don't get continually litigated over the issue. We want an agreement that, in effect, has a remedy that is effectuating. That's the approach that we have here.

I think the real robust of why this thing can't get resolved, is because they don't want to have a firm remedy for whatever the numbers turn out to be.

And my suggestion to Your Honor is understanding these issues, and I'll try to address each of the specific issues, is that you set an evidentiary hearing that we will not terminate them. We set an evidentiary hearing for whatever's convenient for your schedule. I think my brethren on the phone will be prepared to try this thing as soon as they can.

But the parties can either -- to do two things. They can either litigate and try to settle on a practical basis to try to reach some kind of economic number, whether it's seventy-five percent of the working capital agreement, whether it's February versus January versus December. It doesn't seem to me that its overly complicated to ultimately strike a deal on these numbers.

The real issue is Leson's concern that it won't be able to meet it. And the real concern -- I mean, clearly, every letter of intent should have the ability of their dealer to provide financing. They say it's a chicken and egg situation. Right. Until I lock in onto a working capital requirement and have a servicing agreement I can't get the final commitment.

But as of today they still don't have, I believe, a final commitment. Counsel will stand up if I'm wrong on that

issue, it would be able to say I'm wrong, and be able to pronounce that he's got firm financing.

But without firm financing, forget about the working capital requirement, whether created this or not, if they don't have dealer floor financing they're not a qualified dealer, under every circumstance.

Now the issue is how much do I give them -- how much time do we give them to ramp up to their old levels, and what should be their interim benchmarks? Things like that get negotiated in various types of deals all the time. And they should be able to be able to come to some kind of an arrangement to be able to do that.

And it's not -- their proposal was all I should be able to give you is 1.8 million dollars because that's what I did during the wind-down agreement. Well, we could quibble with this, but if we have to argue this it's my understanding that the dealer service agreement in Section 10.1 provides that if there are changes in the operating conditions that indicate the capital needs have changed that's when you change it. But you don't have to change it all the time.

And it's certainly unreasonable for us to set their working capital needs based on a wind-down period when they're supposed to set it for purposes of their projected business going forward. They'll be able to buy new cars, they need to have more working capital. It shouldn't be based on the

numbers when it was set when they couldn't buy more cars. And so the bid and the ask I think they presented an affidavit was something like a million-eight. Was it? A mil -- was it a million-eight?

MR. BEEBE: It's a million-eight, but that's what GM really requires under it's accounting guidelines.

MR. STEINBERG: It was a million-eight based on -- I disagree with that we could -- when we get into the battle of the experts we'll be able to show that's not true.

But for purposes of just pure numbers, yours was a million-eight based on wind-down performance over the last eighteen months. And New GM has made a proposal that said they want you to get up to a 2.1 -- 2.137 million net working capital performance in the next four months, presuming you're buying cars and you're ramping up, and trying to make money and be in business, make money for yourself and make money for New GM.

So my practical solution is, Judge, set this out far enough so that the parties can either negotiate a deal and use their dollars for that purposes. And if they can't we will present to you evidence on the duress issue, on the letter of intent, to demonstrate that they had the opportunity to do exactly what they're doing now, and they chose not to do it. They were clearly lawyered up, they just came from an arbitration, and they chose to sign a letter of intent.

Once they signed a letter of intent, and the letter of intent has language about this is knowing representation, et cetera, then they should be stuck with it, and they will have violated the letter of intent.

GM is not trying to be heavy-handed about this. We've tried to meet them halfway, but we're not going to agree to do a deal with a dealer who can't get financing, who won't commit in the future to have financing locked in by a specific time. And won't commit to a working capital requirement that is -- they want to have it predicated on a wind-down number. And that clearly can't be the case, because they don't want to do business as they've been doing it on the wind-down basis. They need to do it based on buying new inventory, which means it's a higher number.

We'll have a trial then for Your Honor to say well, what should have been customary and usual. And we'll see how much money we'll spend to see whether we can get something that fits between his 1.8 million dollar number and the offer that we made which is at the 2.137 million dollar number as of January 31. And giving them another full year to ramp up fully to their operations that they had in 2008.

Your Honor had said that you were concerned about the res judicata of the arbitrator's findings. Our belief is that under the Dealer Arbitration Act the arbitrator could put in whatever his reasoning was, but his final determination was

reinstate or not reinstate subject to a letter of intent. And that's the only significance of the arbitration finding.

The sentence that Leson's pulled out which says that we think they met the capital needs because it goes back to 2003 I don't think is relevant for what Your Honor's determination will have to be. I don't think it's entitled to res judicata effect. And it wasn't part of what they were supposed to do.

And, Your Honor --

THE COURT: Pause, please, Mr. Steinberg. What did you mean you don't think it was part of what they were supposed to do? You mean the arbitrator wasn't required to make that finding, or you're saying he acted ultra vires by making it? Or are you saying that you understand he made it but it's irrelevant? Or some fourth possibility?

MR. STEINBERG: That the arbitrator's -- the relevancy of the arbitrator's finding is to reinstate or to not reinstate. And how we got to the decision and how we weigh the seven factors that the statute talked about should not have res judicata effect for purposes of any subsequent hearing.

THE COURT: Uh-huh.

MR. STEINBERG: The issue on discovery on customary and usual, we actually do have a trial, is that we would say that Your Honor should bifurcate and first try the issues of duress. Because if we win on duress that there was no duress,

then the letter of intent governs and it's not relevant anymore. They just will have not been able to perform.

THE COURT: Well, why don't you give me a preview, Mr. Steinberg. What was the legal authority under which GM gave them the deadline to sign it or not sign it? I don't remember whether it was two days or ten days, or whatever?

MR. STEINBERG: It was ten days.

THE COURT: All right. And what was the statutory authority or alternative authority which entitled New GM to make that demand?

MR. STEINBERG: I don't think it's in the statute that is says it's ten days, two days or twenty days. It just says you're supposed to give a letter of customary and ordinary -- a customary and usual letter of intent, and that's what they did.

They didn't want the offer to be outstanding. I think you can actually see Leson's objection, you'll see that -- ironic that Leson signs the letter of intent on July 1. And on July 2 New GM is writing a letter to Leson saying you have to July 16th to determine whether you want to sign the letter of intent. So there wasn't -- I don't think there's anything statutory. I think it's just simply a matter when someone makes an offer they'd like to have a deadline as to when the offer will then be rescinded. So that's what it is.

THE COURT: You're not troubled by the notion of

giving a dealer a deadline, especially one that short, without any statutory authority for a take it or leave it proposal?

MR. STEINBERG: I think we -- I think, and -- I think this is the case, but we -- I would need to confirm it, I think that's what we did for the dealers. I mean, I think that's what we did. Because at some point in time you need to start -- you need to come back on the bandwagon and you need to start performing. And so there was a desire as to now that you've won, now we want to get you on the bandwagon, here's the terms, and you have ten days to accept the terms.

I mean -- and think about it, what happens if they had said no, does that mean that the world stopped at that point in time? They could have done exactly what they're doing now, which is that they would come to court and say I didn't get something that was ordinary and customary, I'm not signing this agreement. I want to have something that's ordinary and customary, or simply I want to have another two weeks to evaluate what it is. But they didn't do either. They signed a letter of intent.

So I --

THE COURT: Better make your next point, Mr. Steinberg.

(Pause)

MR. STEINBERG: I think, Your Honor, the only thing that I have left to say was that the wind-down provision

affected Leson's performance. And I think what New GM tried to do was to give a lead time for them to ramp back up to their 2008 performance. They weren't saying you needed to have net working capital by a specific date. They gave them four months to get to that point in time.

THE COURT: Isn't that the real thing to get one's arm's around, either by negotiating or by litigation? When the dealer has atrophied, if you will, because of the consequences of the wind-down environment, to what extent is it appropriate to meet otherwise legitimate needs to get the proper capitalization and floor financing, to simultaneously address GM's legitimate needs and concerns, and the dealers think God, I'd love to comply, but given what you did to me for the last eleven months how am I supposed to do it.

So I would concede to you, or at least for purposes of argument I would concede to you, that the devil is in the details, and that one should try to find a sweet spot to have the dealer get into compliance, recognizing the dealer can't get into instantaneous compliance, and how to reconcile those needs. That is far better, it would seem to me, than arguing about what is customary and usual when the environment in which that's measured has been distorted by the consequences of the deferred termination agreement.

MR. STEINBERG: Yeah, I think, Your Honor, you're absolutely correct. And that's why I stood up to say that I

thought I can address some of your concerns and try to give it it's color and try to push where I think this thing needed to go. I mean, at some point in time hearing stopped, business people get to absorb Your Honor's comments, and then they either will react and change their negotiation position, or we will set up a litigation backdrop for people to get more realistic in their expectations.

And I think -- I tried to be very candid to you -- with Your Honor, which is that they raised, I believe, an issue about how long should I have to ramp up. And am I going to have a draconian remedy when I'm concerned about whether I won't be able to perform because I won't be able to get what I need from New GM. So I'm concerned about the draconian remedy. I think there's an underlying tension there.

So how much time do we give them to try to build in that concern and to be able to make sure that they have every opportunity to perform, with the concern that New GM has, which is that this is the dealer who may not be able to perform. And at some point in time you need to cut bait with them. And that's the tension here in this case.

Clearly, it can't be that the numbers should be set based on the wind-down agreement. And their argument is I can't do 2008 numbers now and I need to have time to be able to do the 2008 numbers. And with regard to financing I have a chicken and egg situation. I need to show that I'm real and

that I can get my lenders finally to commit to me.

So how much time do you need, and what do I need to do to be able to do that? Most of those things are much better accomplished at a negotiating table with business people by the side who did thing for a living every day, to try to reach a deal.

And I'm suggesting to you that the -- my interim solution that I would recommend to Your Honor for your consideration and for my counsel -- my co -- my opposing counsel's consideration. Is that I don't think anything should go forward in the Louisiana Motor Vehicle Commission this week. I think Your Honor's ruling on exclusive jurisdiction means that that has to stop.

I think that we would commit to have parties continue the dialogue. The settlement offer that I read is -- we will leave on the table for a period of time for them to further consider in view of Your Honor's ruling. And that we ask that Your Honor if -- set a date for an evidentiary trial, as to whether we acted appropriately and whether the LOI was in the context of a duress. That we know Your Honor's schedule's very busy and that if we don't see a dynamic moving on the business side, that within a ten-day period of time we would call, collectively, Your Honor's chambers and try to put this on for a hearing. And during that in between time, before we have the actual hearing on the evidentiary side, we will agree that they

won't be terminated.

THE COURT: Uh-huh. Okay, Mr. Beebe, your turn.

MR. BEEBE: Thank you, You Honor.

There's a lot there, Your Honor. And I want to begin with the net working capital issue and dealing with what GM really requires under its dealer and service and sales agreement.

Your Honor, if I may I'll provide you with a copy.

THE COURT: Okay. I assume you have one for Mr. Steinberg.

MR. BEEBE: I do, Your Honor.

(Pause)

MR. BEEBE: GM's counsel paraphrased, and I think not necessarily correctly, but the point shouldn't be lost on the Court regarding 10.1 and what it provides.

Now, Your Honor, I also want to point out this is the agreement which is governing the relationship between the parties, along with, I presume the wind-down. But this is the dealer sales and service agreement in which Leson is operating. And it was the one that was introduced in the arbitration and is considered to be -- GM at least admitted in the arbitration it has effect currently.

And you can see 10.1 net working capital. "The capital standard addendum reflects the minimum net working capital necessary for a dealer to effectively conduct

dealership operations. Dealer agrees to maintain at least this level of net working capital. GM Motors will issue a new addendum if changes in operating conditions or General Motors guidelines indicate capital needs have changed materially."

Well, Your Honor, they have changed materially. They've changed materially because of GM's wrongful termination of Leson.

Rebo's calculation is consistent with what GM requires.

If I may, Your Honor, if you'll look at Exhibit P, I'm going to give you what's actually their -- from their accounting guidelines. Or, actually, their requirements. This is what GM says is required. And I'll give you the addendum here in a second, Your Honor.

If I may --

THE COURT: Mr. Beebe, is this one unique to the GM/Leson relationship, or is this a prototype for a use and other matter?

MR. BEEBE: This is what they have, this is for all dealers, Your Honor. I believe this comes up as a computer generated document. In other words, their manual is on their server. And if you were to go and say I want to pull net working capital standard, this is what would -- you would find.

And as you can -- and I also gave you Exhibit O which is the addendum which supplements the dealer service and sales

agreement.

But, Your Honor, if you look at this net working capital standard, it says on page 1 of the operating report, "Represents the minimum amount of net working capital needed to sustain satisfactory operation of the business. This net working capital standard is part of the contractual agreement between the dealership and the manufacturer established annually based on the dealer's method of operation and data shown on the operating reports for a twelve-month period."

And it says "The determinants are," and it gives you six determinants. And Ms. Rebo has calculated those for you. And it comes out to be 1.8 million dollars based on the twelve months running through, I believe, maybe September or August. But, essentially, it's 1.8 million dollars during the wind-down period.

And what Leson expects is GM to honor its promises. Honor its obligations; its contractual obligations. Whether it's under the dealer sales and service agreement or what they're saying is how they calculate it.

There has been a material change and Your Honor pointed out, when you said it seems a little unfair if GM creates a situation and then tries to benefit from it. They're the ones who wrongfully terminated Leson, and now saying well, you have to disregard that. We want 2008 performance because we're certain you're going to get there.

How are they certain we're going to get there? Okay. What if they decide they can't -- they don't manufacture cars quick enough or get us to the inventory that we need to sell? There are so many other factors.

So all Leson is saying is honor your commitment, honor what the written document says. Let's calculate it. And then in thirteen months if you want to recalculate it, let's recalculate it based on our performance. Okay. Because that's really what should happen here. And what they -- what GM has offered here, is saying no, we really want a hook here, we want seventy-five percent of that net working capital.

But the fact is it's based on operational performance. And so if we get the inventory, but we still can't get inventory from them, so we -- four months from now it's not going to really matter to have it at 2.1 million dollars if you don't get any cars to sell. I mean, it truly is a chicken and egg situation, Your Honor, that we find ourselves in where GM keeps saying we want 2.8 million dollars. So we go to GMAC and say well, we're working on that. We think they're going to allow us to have a lesser number, we think it should be 1.8. GMAC says well, we really want to get that number because that's going to be amount of capital you have really sitting on the side.

The key, Your Honor, and you're going to have to understand this, is a commitment. And financial resources

committed to the dealership.

And, in fact, I'm going to provide to you a copy of what was Exhibit -- I want to say 18, to the Thys' brief. It is what is considered according to Mr. Aronson, counsel for Thys, which is being transferred to you out of Iowa, a customary and usual LOI. And you'll see there are no operational directives in it.

And, in fact, it says you have thirty days to decide what -- whether you're going to accept this or not. And, again, this is based on -- this is something that was attached to the brief in Thys. And, obviously, GM has a copy of it.

Your Honor, you see that there is no specific number of net working capital in this standard LOI. What it does require is that commitment. We have an eight million dollar facility, fourteen acres in Metropolitan New Orleans in the West Bank. We're the only GM Chevrolet dealer on the West Bank. This family has been there for eighty years.

THE COURT: By West Bank you mean the West Bank of the Mississippi?

MR. BEEBE: Yes, sir. I apologize, the West Bank of Mississippi.

THE COURT: No, I just -- I've been to New Orleans but I don't know it as well as I think you do.

MR. BEEBE: Well, it's right over the river probably about two miles from the bridge. So not too far from downtown.

It's a wonderful location, but they have eighteen acres. The second busiest intersection in the State of Louisiana, according to traffic surveys and part of the evidence that had been introduced.

So this family is committed, they've been there for eighty years. And you'll hear a long and distinguished history if we ever have that opportunity to present that to you, Your Honor. But we'll get to that on the res judicata question.

But what you can see, and this is why GM isn't being as forthcoming as it appears in usual and customary LOI. No mention of net working capital number, no mention of a floor plan financing. They do what evidence of commitment of financing. Okay. But they don't put specific operational parameters in this particular LOI. And they give you thirty days.

There is -- it's not consistent with 747 when it says you're supposed to get a dealer in service -- a dealer sales and service agreement, and in that particular statute it says you get the LOI and it specifically references that you will get -- it contains the operational parameters in that deal, the sales and service agreement under 747.

It says after executing the sales and service agreement and successfully completing the operational prerequisite set forth therein.

So, by reference, the operational prerequisites are

to be set forth in the DSSA and not in the LOI. That's one thing that we have an issue with substantively about why they haven't complied.

But getting back to the net working capital, Your Honor, it should be at 1.8 million dollars. There's no debate about what GM requires other dealers. And the fact is there's been a material change, a material change caused by GM in that regard. And then when GM comes to you and says oh, let's litigate the duress issue, and if they lose then there's no further issue, no, there is a further issue. Whether we entered into the LOI under duress or not, the question is, is it appropriate to have those terms? Is it appropriate to have it there in ten days? Is it appropriate to have 2.85 million dollars worth of net working capital when their own accounting manual will tell you otherwise? When our own operational parameters, just from a practical standpoint, how is that we go to a bank and we say GM says they only want to look at 2008. Mr. Banker, we want you to only look at our 2008 financial performance. Do you know what the bank says? You got to be kidding me, I want to see what you did in 2009 and 2010. 2008 is irrelevant. But GM doesn't seem to understand that, Your Honor.

You want to give us a four-month ramp-up period, why? Are you going to give us cars after that four-month ramp-up period? Find out how many cars we sold and let's go calculate

it according and in accordance with GM's net working capital requirement under its own manual. That's really what's required. That's what the obligations of the party happens to be under, whether it's the wind-down, whether it's the DSSA, that's what's required. So recalculate it annually, but it certainly should be based on our performance. And it's poor, as you saw from Ms. Rebo's declaration submitted to this court. When you have 700 cars to sell and you're down to thirty cars to sell it's very tough. And we're not getting any new inventory, and we don't seem like we're going to get any new inventory.

So in that regard, Your Honor, I think that GM is dead wrong when they say the duress issues satisfies the whole LOI problem.

Now, there's a question about whether it's usual and customary, and it's clear it's not. And I think that they're going -- you'll find through discovery that, in fact, they've given other dealers different deals. You'll find those participating dealers don't meet net working capital. That's what we think we'll find if you go through discovery. You'll find that they've allowed some dealers to slide in one point -- slide a little bit on net working capital.

Our fear is we agreed to this -- because GM hasn't honored their promises with Leson. And so there's a real fear that wow, we're our net working capital's at 2.1, you've agreed

to walk away, we're going to make you walk away from this dealership. And that's hard for the Leson family to accept. Again, eighty years they've been in business, and it troubles them to say why is it we can't get to some agreement that's reasonable.

And that was the whole purpose, frankly, before the LMDC, that's really what they do. During the manufacturing the dealer in and they say here, let's talk about what we think the various issues are between you and get the lines of communication.

GM has sent their in-house counsel --

THE COURT: Pause, please, Mr. Beebe. Do they provide a mediation function, or an adjudicative function, or both?

MR. BEEBE: Both, Your Honor. The preliminary hearing, as I understand it, is where they sit down and talk about -- about here's your issue GM, here's your issue Leson. Let's figure out what the resolution is going to ultimately be. Because I think they really are attempting to balance the playing field between a manufacturer and dealer, but make certain that both are satisfied. GM gets the security that they need with respect to determining okay, is this dealership going to function.

Because that's really what net working capital's about, right? Is it are they going to survive? Are they going

to have enough capital to weather the storm? And that's why it's based on a couple of months average of sales, of parts, used cars, et cetera.

But G -- Leson is in it for the long haul, and they have secured some financing. But it's not going to get to 2.8 million dollars. And they're working on that to take out GMAC, which has the first lien on its property. It's probably more facts than Your Honor needs, but --

THE COURT: On the fee or on the vehicles, or both?

MR. BEEBE: Well, floor plan would be on the vehicles. And then they have the real estate, which, again, the dealership is worth between five and eight million dollars, depending on the appraisal.

THE COURT: You mean, the land.

MR. BEEBE: Land, yes, sir. And they're looking to take the floor plan financing out of GMAC's hands and going to a local bank. And based on SPA's latest legislation that they've put forth and availability of funds, it appears that -- we're hopeful that we'll get that and be able to take GMAC out of the equation and have the floor plan financing as well as the facilities, or the real estate loan covered by this local bank. So we're working on that.

But we also have secured a million dollars from another local bank, which would put our working capital at 2.1/2.3. But, again, that's not what's required. That's the

problem. They're saying, you know, you got to take that million dollars, we need to use some of that million dollars, obviously, to reinvest in the business, reinvest in our employees and grow our business.

But, Your Honor, as far as net working capital and usual and customary I think I covered the ground on that unless you have some questions regarding that. But we feel pretty strongly that GM isn't honoring their promises, and, frankly, the net working capital should be calculated at the number that Ms. Rebo has submitted to Your Honor.

And the fact is this letter, while submitted in another matter, is fairly determinative that GM hasn't submitted a usual and customary LOI to Leson, at least in these circumstances. And I think Thys is going to take that very same position before Your Honor when they arrive here, because they're being transferred from Iowa.

Now, Your Honor, you talked about the res judicata effect of the arbitrator. And I think the arbitrator's decision that we have net our capital requirement absolutely stands. And I'll tell you why.

Congress in 747 said "The factors considered by the arbitrator shall (1) include the covered dealerships profitability in 2006, 2007, 2008, and 2009, (2) the covered manufacturers overall business plan, (3) the covered dealerships current economic viability, (4) the covered

dealerships satisfaction of performance objective established pursuant to the applicable franchise agreement, (5) the demographic and geographic characteristics of the covered dealerships market territory, (6) the covered dealership's performance in relation to the criteria used by the covered manufacturer to terminate, not renew, not assume, or not assign the covered dealership's franchise agreement, and (7) the length of experience of the covered dealership.

THE COURT: Pause, please, Mr. Beebe.

MR. BEEBE: Sure.

THE COURT: The words that preceded that list of seven things, what did you read to me? Did it say in substance the arbitrator shall consider or take into account? What were the exact --

MR. BEEBE: Yes. "The factors considered" --

THE COURT: -- words?

MR. BEEBE: -- "by the arbitrator shall include those seven factors."

THE COURT: Okay.

MR. BEEBE: And so -- and you can see from the opinion he drew a conclusion that all of those weighed in favor of Leson. And so we can't revisit that here.

THE COURT: So pause, please. Your position is that he made factual findings in connection with that determination on those seven sub-issues prior to issuing, what we might call

in slang, a bottom line decision.

MR. BEEBE: That's right. And you'll see that in his opinion, Your Honor, or his decision. Which I think is submitted to Your Honor as -- let's see, it is Exhibit C to our reply. And it's approximately six or seven pages, but there are several facts that he has presented to Your Honor in that decision. And it's pretty clear that, again, all of them weighed in favor of Leson.

So Leson is a little fearful that we're going to come back and relitigate those issues. And we certainly shouldn't have to. It seems completely unfair when you have a determination after somebody having heard evidence for two days comes to the conclusion regarding Leson's viability, it's economic contribution to GM and says you should be reinstated per 747.

THE COURT: Brief me on the arbitration procedure. Was there opportunity to cross-examine?

MR. BEEBE: Yes, Your Honor. It was just like a -- essentially, a trial. We had our opening arguments, our opening statements, and had witnesses presented by Leson first, cross-examined by GM's counsel. The arbitrator asked questions when he thought it was appropriate. Then GM was allowed to put on their defense case. And then we were allowed to put on a rebuttal case. There were no closings.

THE COURT: Continue, please.

MR. BEEBE: I'm sorry?

THE COURT: Continue, please.

MR. BEEBE: Okay. Now, so with respect to that, we ask that the Court look very carefully at 747 and look at the factors that were considered and look at the arbitrator's decision. It's clear that it should res judicata regarding those particular factors and Leson's satisfaction of its performance obligations to GM under the dealer's sales and service agreement which was really what we're talking about here. And as a consequence, there shouldn't be a lot of issues regarding Leson's inability to perform going forward.

Part of it is what would have happened if GM had said you should have ten million dollars in net working capital? Why is that not unreasonable? I mean, so the point is, they have a formula which they're completely disregarding.

Your Honor, there was also -- you had raised -- let me take a look at my notes. I want to talk a little bit about the duress issue, Your Honor. GM takes the position that on July 1st we just signed the agreement without any thought. As you'll note in our submission to you, Your Honor, we gave you a copy as Exhibit E of the June 28th, 2010 correspondence and as Exhibit F our July 1st, 2010 correspondence. I have copies for Your Honor if you'd like.

THE COURT: Yeah, you can hand it up, please. I couldn't find it in my pile.

MR. BEEBE: I have E -- here's the letter we sent basically two days after we receive the LOI, raising the very issues that we're here raising before Your Honor regarding propriety of the LOI and the inconsistency with 747. And, again, when we signed -- because they said you have ten days, we were really concerned; we had no choice but to sign it.

With -- July 1st, when we sent it to them and we made phone calls, Your Honor. That'll be -- that's clear from the record and the submission of Lisa Rebo calling GM to talk about this. And we sent a second letter that raises considerable issue with GM's approach and heavy-handed approach on demanding that we sign the LOI that wasn't consistent with our reading of 747. And so you can see we have a long laundry list of issues or complaints here in Exhibit E and the same is repeated again in Exhibit F which accompanied the signed LOI.

And, so, Your Honor with respect to duress, we think we'd be able to prove the case of duress but it seems to us that what the Court should be focusing on is getting the parties together and saying GM, what is really your obligations under the dealer's sales and service agreements and Leson, what are your obligations in that regard, going forward now that you've been reinstated?

We think our net working capital, if it's 1.8 million dollars, we're going to get the financing and get the floor plan financing and get new cars in and be able to meet --

recalculate it, net working capital, recalculate performance parameters that are equivalent or consistent with those particular requirements based on our financial performance.

It can't be usual and customary, Your Honor, where you wrongfully terminate somebody, you create this financial hardship and then we can't go to a bank and say, we only want you to look at 2008 numbers. And the bank says, no, we want to look at 2009 and 2000 (sic) numbers -- 10 numbers. That can't be usual and customary. It's commercially unreasonable to demand that Leson automatically reach its 2008 performance. Four months isn't enough time. It's simply not enough time. It took eighteen months or sixteen months to get here. Why is it you wouldn't have that same ramp up time to see how many cars you have, then set the net working capital, based on that performance after you've had a chance to at least sell a full inventory and sell it for twelve months? That seems to be the reasonable business approach, get a full inventory, sell these cars then recalculate net working capital. That's really how it should work and that's how it worked, frankly, I think, before the arbitration and before the GM bankruptcy.

Your Honor, with respect to discovery, I've kind of covered that briefly with regards to the -- what we consider to be at least a question about usual and customary. We're sort of in that catch-22 that you mentioned earlier. It's the expense that it takes to engage in this battle and Leson,

again, is not getting any new cars any time soon and so it puts us at a sever disadvantage and it's very problematic.

We don't want to spend a lot of money engaged in extensive discovery, but I'm pretty certain that we're going to be able to prove what we say that GM hasn't given us a usual and customary LOI. And you'll see that they've negotiated with several dealers. And they say that's a tribute to their good faith. Well, maybe they can take it with respect to their good faith with those other dealers, but certainly not in Leson's case.

Also, the other thing, Your Honor, is we'd -- we believe that the choice of law is important here. We think that the choice of law analysis and obviously with this Court sitting here in New York that New York's choice of law analysis would govern. But ultimately, the Court would conclude that Louisiana law would govern this arrangement in this relationship.

THE COURT: You better help me with that, Mr. Beebe, because the choice of law ruled in New York as in most states will respect choice of law provisions in other documents.

MR. BEEBE: That's certainly true, Your Honor, but in your opinion, I believe it's in Lois/USA Incorporated 264 B.R. 69, it's -- you basically acknowledge that under Cargill, that the Second Circuit has noted that New York law allows a court to disregard the party's choice when the most significant

contact with the matter in dispute are in another state.

THE COURT: Are you a Saints fan?

MR. BEEBE: I am, Your Honor.

THE COURT: You know what a Hail Mary is?

MR. BEEBE: Yes, Your Honor, I do.

THE COURT: Well, when you're trying to get out of a contractual choice of law provision. That's kind of like a Hail Mary.

MR. BEEBE: I understand, Your Honor, but --

THE COURT: Now --

MR. BEEBE: -- I do want to raise --

THE COURT: Now --

MR. BEEBE: -- that issue --

THE COURT: -- there is more room under choice of law doctrine, conflicts of law doctrine, for resort to other forums when there is no express choice of law provision. But didn't the termination agreement provide for Michigan choice of law?

MR. BEEBE: It does, Your Honor. There is a specific provision in the wind-down agreement that applies Michigan law.

THE COURT: Under normal choice of law rules, unless you can tell me that I've missed something over the last ten years, a New York Court would honor a choice of law provision providing for the selection of Michigan law.

MR. BEEBE: No, and I appreciate that, Your Honor. I will tell you, for example, I believe the dealers' sales and

service agreement also provide Michigan law, but I believe that in Louisiana, the Louisiana Court or the LMVC would apply Louisiana law because of the strong public policy that's involved with regards to the manufacturer of vehicles in Louisiana and its police powers that are being exercised under its regulatory scheme that enabled and created the LMVC in Louisiana.

As a consequence, Louisiana court would in fact apply Louisiana law to that relationship. And, again, you decision in Lois cites Cargill which would allow the Court to disregard it if the most significant factors weigh to another state. And here we'd argue that, look, Leson's dealership is there, GM goes all over the country and they deal with other states' laws. The contract was signed in Louisiana, at least on Leson's part. That's where the real dispute is with regards to the administering of Leson's Chevrolet.

THE COURT: Are you aware of any case in the country that has ever based choice of law on a physical locality of where a contract was signed?

MR. BEEBE: No, not exclusively. But I believe that's one of the factors that was listed, at least, in the Cargill decision, Your Honor, from the Second Circuit here. So it's not persuasive -- it's not determinative certainly, but it's a factor to be taken into consideration apparently.

THE COURT: Well, your other points have been a

little stronger, Mr. Beebe, so why don't you get back on track?

MR. BEEBE: Okay. Your Honor, I want to make certain that I've answered each and every one of your questions here.

Your Honor, I think that I've covered each of your questions, at least as listed in my notes regarding first the failure to meet the performance criteria, was created obviously by GM's wrongful termination. I think we've covered that and feel pretty comfortable that we find ourselves in this situation because of GM's wrongful termination.

Now, with respect to what GM has offered in its LOI, we clearly believe there's a disconnect and inconsistency what -- which is absolutely required under 747 where it says you are to give them an LOI, usual and customary, and then a dealers' sales and service agreement not an amended wind-down agreement which they were offering. And so, we're still waiting for that dealer's sales and service agreement and that's where the operational parameters should be contained. That's where they should be listing what you're required to have as far as net working capital, as far as floor plan financing.

And then as far as the issue dealing with duress, Your Honor, I think it's well documented regarding our position and signing it under protest, beginning on the 28th of June and then subsequently on July 1st.

And then finally, Your Honor, res judicata. We ask

that you carefully review the arbitrator's decision and the factors that he considered in 747 and that we not be forced to revisit those here. Because I think absolutely, it is persuasive and determinative of the fact that Leson had reached and had maintained a proper dealership and maintained consistent with it dealer's sales and service obligations. And as a consequence, it should be reinstated.

THE COURT: All right.

MR. BEEBE: And finally, Your Honor, just with respect to discovery, obviously we think that we should be entitled to it and that ultimately, it really would relate to what is usual and customary. You may also have some discovery on duress, but usual and customary, I think it will be demonstrated, that GM doesn't have something that's completely usual and customary but what they sent out to Leson certainly is not usual and customary and consistent with what they had sent out previously and perhaps with even another arbitration winners. Thank you, Your Honor.

THE COURT: very well. Mr. Steinberg.

MR. STEINBERG: Your Honor, attached to the reply memorandum is the Ohio -- Iowa decision in Thys. And on page 8 of the decision, it describes what New GM did to Family Auto which was the dealer in Thys and what the LOI was that it sent.

And it says that it wanted to establish and maintain a 296,000 net working capital, obtain all appropriate silence

to conduct the franchise and return its wind-down payments. And then New GM asked Family Auto to sign and return the letter of intent within ten days of receipt.

So counsel got totally confused in its presentation of what is ordinary and cust -- ordinary, customary and we will have that opportunity to present it to Your Honor. But the first thing he did was totally misstate the letter of intent that was given to the person who won the arbitration award.

What he did give you was something different. Your Honor doesn't have the Thys case yet in front of it, but the decision in Thys related to the fact that this dealer, while it had just -- while it was in arbitration, essentially sold his business. And what counsel gave to you was the letter that New GM gave to the buyer of the business, the buyer who bought from the entity that won in the arbitration award. So it wasn't a letter of intent in connection with having won an arbitration award. It was essentially the type of letter that you give to someone who's going to become a new dealer in your network.

Even if you wanted to look at that document that he said doesn't have provisions, it does have provisions. So paragraph 1, the second bullet point says, "Evidence that the investment had been made in accordance with the proposal of the capitalization of the dealer company to include originating account disbursements as represented on the Source of Fund

statement together with like deposits in the dealer company." So they were asking the new dealer to give me the evidence of your capitalization proposal.

The fifth bullet point, "Evidence that the dealership had obtained a separate line of credit from a credit-worthy financial institution acceptable to GM to enable the dealership company to sufficiently finance the purchase of a sufficient number of new GM vehicles to meet the obligations under the dealer agreements." Which is essentially the same kind of general language which was in the letter of intent about the ability to get capitalization.

So we're not here -- and I don't mean to try to turn what was not supposed to be an evidentiary hearing into an evidentiary hearing. And I think Your Honor should have the opportunity for that if we end up getting to that stage. But what he gave you was totally wrong. He tried to give you evidence of what was in the letter of intent. The decision in the Iowa court describes what was in the letter of intent. He's giving you the response that we gave to the person who was going to buy -- bought the business from the dealer.

The second thing. The exhibit that counsel gave to you about the capital standard addendum, the second paragraph which is his -- which was denominated as Exhibit O says, "General Motors has determined that the minimum net working capital standard necessary for the dealer to adequately conduct

the dealership operations consistence (sic) with the dealer's responsibility is 2.85 million dollars." So this is where that number came from; it didn't dream ten million dollars. It was in the dealership agreement. And it's not predicated upon what you did in the past and it's predicated on what you expect to do in the future. The whole concept is to make sure you're capitalized to do your anticipated work, not that you're capitalized to the extent that you may have poorly performed in the prior year.

It's perspective. And we will have that opportunity if we have a trial on this thing to be able to present that type of evidence and we'll be able to show that the Exhibit P, which has been presented, is sort of taken out of context and is not supposed to be reset on a twelve month period, but is to be set in accordance with Section 10.1 of the dealership agreement.

I let counsel say over and over again that New Gm didn't honor their promises and I will just say once that there was a letter of intent signed by his client and we believe they have not honored their promises. Part of the problems in negotiating the deal is -- if we have a deal, is that level of distrust because both sides said that the other haven't honored their promises. But, no one should think it's a one-sided situation where only New GM has been at fault for their conduct in this case. And I won't even say they're at fault.

They were a bankruptcy debtor who chose to enter into wind-down agreements, consistent with their opportunity to reject executory contracts. Congress passed a statute after the fact and then they revisited the decisions to reject in an arbitrator's rule. And sometimes the arbitrator sided with GM and sometimes it didn't and that's just the way it was.

But you don't translate that kind of activity into saying that we breached the agreement. Having said that, I still recognize what Your Honor was troubled with, which is that by virtue of them being in wind-down mode not being able to purchase new inventory, their business has suffered. And that they need to have the opportunity to ramp up.

The arbitrator's decision and -- is with regard to the working capital standard, was that Leson has also met GM's capital requirements as it hasn't changed since 2003. They -- the decision didn't say what the capital requirement should be as -- for purposes of a letter of intent. And there is nothing there in the decision which says what it should be. And this arbitrator didn't have the ability to set that amount. And what New Gm did was set it at the existing amount and gave what it thought what the appropriate time to ramp up. And if we have a trial, it'll be to show that we gave other dealers the same type of time to ramp up to their past performance deals.

The arbitrator's decision also did include on paragraph 9 a statement that the dealership has secured

drawings for a new car showroom and a commitment letter from a local bank for perspective financing, once it's reinstated by General Motors. Whatever that commitment letter is from a local bank doesn't seem to still be a lot. They don't seem to have the financing as part of the issue and the concerns that New GM has. And I guess that was the basis upon -- one of the things why this arbitrator believed that it was appropriate to reinstate the dealer.

But, Your Honor, I want to stop myself here because I feel that if I go back and forth on a tit for tat basis, he didn't give you the full evidence but we'll present it later on, I won't be serving judicial resources' time appropriately. At this point in time, it seemed to me that we have differences that either we negotiate or that we need Your Honor to make rulings on. And I go back to what I had proposed before which is give the clients the opportunity to absorb the ruling. We've done our sparring for today. If he wants to continue to spar, I don't think I have much more to say.

I'm sure if I let my co-counsel on the phone who's been listening to this, they're probably jumping up and down with a lot -- what they want to say, but I don't think it matters because we have to present it to you in an organized form with proper briefing and proper evidence and this is not an evidentiary hearing. And Your Honor has wanted to hear the issues for purposes of the evidentiary hearing, but at some

point in time we stop because we don't turn this into an evidentiary hearing.

If we can't resolve it, I go back to what I s said before which is that whether the letter of intent was entered into duress is the show stopping gating issue. Because if we're correct that it was not under duress, then they will not have performed and then under the contractual commitment that they made, they would have lost their dealership. And that should be, if they want to save expense, that should be the gating issue that it happens.

If they can establish that there's a factual issue that -- or that they win on that issue, we're not bound by the letter of intent, then we can get into the litigation as to whether what is ordinary and customary. And we have a large track record of what we've done in this case, what we've given to people who have settled and not gone to arbitration, what we've done in connection with people who won arbitrations. I mean -- and what they got is consistent with what we gave. And it addresses the two most critical issues here which is financing and working capital requirements. And if we end up asking Your Honor to be the Solomon decision maker here as to setting what the working capital requirements are for this dealership and what -- and when they should get their financing in place, so be it.

Most li -- most parties like to put that situation

into their own hand as compared to giving it to a judge to decide, but we're prepared to do it either way. If you think it should be negotiated, if it can't be negotiated then we should have a hearing. I know Your Honor is very busy. I know we will try hard so that we don't need to do it. I do think that the cost of a hearing will be expensive in light of where we are right now. Remember? He wants to use the wind-down provisions -- the wind-down performance as the basis for setting net working capital requirements for when they have to start ordering inventory to show that they can be capitalized as a running business. We think that that notion is ludicrous and we'll be able to show that right of way so that the number will naturally rise.

And the issue is -- we're at 2.137 million dollars over four months and then giving him another year to get up to where he was in 2008. I'm not sure if we're off, how far we are off at all. But I'm pretty sure that whatever we end up litigating will eat into some of these differences.

But that's what I think, Your Honor, is the best way to go forward. I did have some more notes as to what the res judicata effect, choice of law. I think Your Honor would be better off, if they do want to raise it, if it does become issues, to get the benefit of briefs to be ale to have the benefit of documentary evidence and not the way that this has gone on for the last little while. Because it's clear that

when he referred to the Thys situation and referred to a dealership, he was not referring to the letter of intent that was given to that dealer. Thank you.

THE COURT: All right. Thank you.

MR. BEEBE: Your Honor, if I may. Just one last point if I may.

THE COURT: If brief, go ahead.

MR. BEEBE: Well, Your Honor, one thing. I think the record is clear now --

THE COURT: Come to the microphone first, please.

MR. BEEBE: Mark Beebe on behalf of Leson Chevrolet. Your Honor, I think the record is clear regarding what this is in Exhibit 18. I wasn't suggesting that, obviously, this is what was given to Family Car Dealership are -- is -- this is something Mr. Anderson who represents those particular dealers submitted to the Court in Iowa suggesting this is usual and customary and that's the representation that I made on the record.

Your Honor, the one thing that I'd ask that you carefully consider is perhaps given -- I heard you say this morning that you felt like the Dutch boy with his finger in the dyke. Perhaps I would ask that you abstain under, you know, 1334(c)(1) --

THE COURT: That's not going to happen, Mr. Beebe. So let's talk about the issues that --

MR. BEEBE: Okay.

THE COURT: -- are before me.

MR. BEEBE: Well, and then finally, Your Honor, I'm going to need -- I respectfully request a stay. I think, which has been -- also been granted to the other dealers regarding the termination or potential termination to October 31. I think Your Honor had entered this language and it said order that sufficient reason having been shown therefore pending the hearing and the termination, I would say of Leson's application, pursuant to Federal Rules of Bankruptcy Procedure Rule 8005, New GM is hereby enjoined, restrained and prohibited from A) seeking to enforce this Court's order today and B0 terminate suspending, canceling, limiting or otherwise restricting under the wind-down agreement Leson's Chevrolet dealership agreement and right to own and operate a Chevrolet dealership.

THE COURT: Whose language was that because I wouldn't have thought that I --

MR. BEEBE: That's Judge Patterson's language.

THE COURT: -- was bound by 8005.

MR. BEEBE: I'm sorry. This is Judge Patterson's language. I apologize.

THE COURT: Nobody's given me a copy of Judge Patterson's order. Would you be good enough to do that?

MR. BEEBE: I would, Your Honor. I apologize because

I've highlighted -- but if counsel's okay with it, then certainly. This is the order to show cause that you signed leading up to the hearing, Judge.

MR. COOPER: To be clear, Your Honor, this is the TRO that he entered for to stay -- to keep the status quo until he heard the actual argument on the stay pending appeal and he has not rendered a decision on that. But that's the order to show cause that he signed.

THE COURT: So this is not a stay pending on appeal, strictly speaking.

MR. COOPER: That's correct.

THE COURT: It is something that he ordered to preserve the status quo while he considered the stay application?

MR. STEINBERG: That's correct, Your Honor.

THE COURT: Okay. All right. Fair enough. All right, gentlemen. We're going to take a recess and I want everybody back here by 3:25. I don't know if I'll be fully ready by that time, but that's when I'm going to want you guys available. We're in recess.

MR. STEINBERG: Thank you, Your Honor.

(Recess from 3:06 p.m. until 3:41 p.m.)

THE COURT: Have a seat, please.

Okay. Some of the issues we have here are easy, some are much harder. The easy ones are those with respect to

jurisdiction and to abstention. The more difficult ones involve the merits which I will deal with because I will be exercising jurisdiction if you people can't consensually resolve it.

With respect to the easy issues, I rule in accordance with my earlier decisions involving the losing car dealerships, that I have subject matter jurisdiction, that this is a core matter, that the jurisdiction of this Court is exclusive and that I need not nor should I abstain and I won't abstain. I will exercise the exclusive jurisdiction that was provided for back in 2009.

For the avoidance of doubt, the Louisiana Motor Vehicle Commission will not decide the issues with respect to the enforcement of the arbitrator's rulings. I will. And also for the avoidance of doubt, I'm going to enjoining Leson from any proceedings before the Louisiana Motor Vehicle Commission with respect to this controversy, including most obviously the proceedings that are scheduled for Thursday of this week.

On the merits, however, Leson has established the existence of issues of fact vis-a-vis the enforcement of the arbitrator's award in its favor on at least the following issues: (1)whether it's signed the 2010 letter of intent under duress; (2)whether New GM imposed the ten-day deadline for acceptance of that letter of intent in good faith; and (3)whether New GM did in fact provide Leson with a customary

and usual letter of intent to enter into a sales and service agreement which is at least seemingly what Section 747 requires.

By articulating those issues, I do not intend to foreclose any other issues that might reasonably be raised by either party. But it's my view as my articulation of those issues implies that having prevailed before the arbitrator, Leson is entitled to a reasonable opportunity to secure the benefits of that ruling. It's that simple. In that connection, the two sides should be free to argue for or in opposition to res judicata, collateral estoppel or law of the case with respect to the arbitrator's findings that it made before the arbitrator issued the bottom line decision.

As my colloquy with each of you hopefully indicated, the underlying concern I have, which may or may not be part of the issues that I articulated above or a separate issue, is whether, under the applicable law, New GM may avail itself of the failure of a condition that its own conduct, at least in material part, occasioned.

And though I think I know the answer to the question that follows or questions that follow, the two sides can have a reservation of rights as to the state whose law will apply and whether the conduct that occasions the failure of condition needs to be malicious or otherwise wrongful or otherwise intentional or simply to have happened.

As I indicated, I'll give you further opportunity to discuss the choice of law, discuss and/or address and also the standard for the application of the principal that I articulated or, for that matter, whether I'm imagining a principal of law that doesn't exist which I'm not deciding today. But I believe each side is entitled to its day in court on those issues. Leson will also be entitled to reasonable discovery as to these issues, though subject to appropriate confidentiality protection.

Until my further order, or any decision adjudicating the merits, both sides will be enjoined. Leson, as I indicated, is enjoined from proceeding before the Motor Vehicle Commission. Leson will get its day in court but it will get it from me. By the same token, New GM is to be enjoined and is hereby enjoined from terminating Leson's dealership until I decide the issues on the merits or any further order from me.

You are to paper those two injunctions by a separate written order whose form you are to agree upon without prejudice to your respective rights to appeal my determinations today or to seek leave to appeal this interlocutory determination. If after trying you can't come up with a satisfactory order to paper that, each side will have the right to settle it upon the other, but I would hope that on a matter of this simplicity that that's not necessary.

For the avoidance of doubt, however, I am so ordering

the record and telling you guys right now that you're enjoined. And that if as it's foreseeable, it takes you a few days to come up with the written order, that written order will supersede my oral injunction today and starting this minute, 3:50 p.m. Eastern time on Tuesday, October 26, Leson is not going to proceed before the Louisiana Motor Vehicle Commission and GM is not going to proceed to terminate Leson's dealership. In each case, the enjoined action is stayed.

Now, with that said, folks, it's obvious to me from hearing the argument and from considering that which is appropriate to implement the arbitrator's ruling, that each side has legitimate needs and concerns. GM needs its dealers to be viable and to satisfy appropriate requirements. Leson needs a fair time to satisfy those requests and to meet requirements that are reasonably appropriate to comply with the requirements of Section 747, the arbitrator's ruling, and to bring itself into compliance with the requirements that I believe that GM reasonably can impose.

I don't see Leson as having the right to get an indefinite get out of jail free card from the requirements that I think GM can legitimately impose. I think it is ultimately likely as a matter of negotiation to be one of setting appropriate requirements and providing for a reasonable time to comply with them. This matter cries out for a consensual deal that balances those competing needs and concerns. But I don't

think that I can or should try to micromanage it and I should not get -- be involved in dictating the terms of any such deal. Instead, it should be negotiated between the parties. Failing which, if you guys want to roll the dice and litigate before me, you'll ultimately have that opportunity. Frankly, I think that would be suicidal for both sides, but you obviously have that underlying legal entitlement.

However, I have both the right under Section 105(d) of the Code and my inherent ability to manage the cases on my watch and the responsibility for managing this litigation in a sensible way. So while I'll authorize the discovery and will decide the underlying controversy if I need to, I first want you to take the effort to try to settle it either one-on-one or with the assistance of a mediator. The choice between direct settlement and use of a mediator, one as to which I express no present view, but what I am telling you is that I am authorizing discovery but the discovery in my view isn't necessary to settle in the matter and to come up with a satisfactory letter of intent. And therefore the discovery will be held in abeyance while -- for a reasonable period of time during which you try to resolve it consensually. If you try and fail then the discovery will proceed before I decide the matter on the merits.

As my questioning to each of you indicated, I haven't been happy with either side's past conduct to date. But now

that both sides understand that I'm invoking my exclusive jurisdiction and that I'll be doing whatever it takes to maintain control of this litigation and to ensure that both sides act appropriately, I assume that the actions by each side that bothered me are now a thing of the past.

So we're either going to resolve this consensually or litigate it; taking as the obvious backdrop for that what Section 747 provides and what the arbitrator's ruling said.

All right. Not by way of reargument, are there any open issues? Mr. Steinberg?

MR. STEINBERG: Your Honor, do you think it would be appropriate to set some kind of calendar date to have a 105(d) conference for us to come back to be able to report as to whether we are in a settlement mode or whether we need to have something more formal?

THE COURT: I think that's fine. I can't give you a date this minute. I have no problem with the two of you walking across the hall to do it.

Mr. Beebe, I assume that if you're in New Orleans it's a burden for you to come up here and if we're talking about a conference only as contrasted to an evidentiary hearing, I'd be willing to do that by conference call.

MR. BEEBE: Thank you.

THE COURT: Although I would want to hear your respective views as to whether any such conference call should

be on the record or off. Normally, if either side wants something on the record, I give it to him. But I prefer to get the recommendation from the parties as to what they think best skins the cat in that regard. And I wouldn't ask you to decide that now. It's easier, to tell you the truth, to hold a conference call than to hold a full hearing, especially with what I'm juggling.

I'm agreeable in concept to what you proposed, Mr. Steinberg, but what we need to do is find the sweet spot that doesn't let it drift too much on the one hand but gives you a fair opportunity to have the dialog that I think is essential, on the other.

MR. STEINBERG: Your Honor, I think that I would appreciate having the opportunity to talk to my client to try to figure out logistically how they want to approach the resolution and how they think it best to do. And so, having made the suggestion for setting a conference date, if we can just defer for a few days and maybe by Friday of this week, counsel and I can call your chambers and try to lock in a convenient date. But this will give us more of an opportunity to confer with our clients and digest a little of what transpired today.

THE COURT: I assume you're okay with that, Mr. Beebe?

MR. BEEBE: I am, Your Honor.

THE COURT: Okay. All right, then let's do that. Am I correct that we have no further business?

MR. STEINBERG: I don't have anything, Your Honor.

THE COURT: All right. Thank you very much, folks. Have a good day. We're adjourned.

ALL: Thank you.

(Whereupon these proceedings were concluded at 3:58 p.m.)

I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
Debtors' motion seeking final approval of a settlement with the Bryant class action claimants granted	32	12
Motion of Walter Lawrence seeking to hold the district court judge from the Middle District of Florida in criminal contempt, I believe, for violating the stay		
Debtors' omnibus objection seeking to expunge bondholders' claims for reason that they are duplicative sustained as to claim of Francis H. Caterina	44	11
Motion by Weber Automotive pursuant to Rule 60(b)to reconsider order with respect to debtors' omnibus objection to claim #23		
Fee apps approved with a 10% holdback to the extent they're not objected to by the fee examiner or UST	92	7

I N D E X, cont'd

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I N D E X, cont'd

R U L I N G S

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib

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Date: October 27, 2010